

Report Highlights

**Louisiana
Department of
Environmental Quality**

March 2002

Louisiana Legislative Auditor

The Louisiana Department of Environmental Quality, or LDEQ, was established as the primary agency concerned with environmental protection and regulation in Louisiana. LDEQ's mission is to provide service to the people of Louisiana through comprehensive environmental protection in order to promote and protect the residents of Louisiana's health, safety and welfare while considering sound policies regarding employment and economic development.



LDEQ employs over 1,000 people and in fiscal year 2001 had a budget of \$113 million. LDEQ regulates a variety of environmental media including air, water, hazardous waste and solid waste.

Audit Results

- ❖ LDEQ's permitting activities and regulation of self-monitoring may not ensure that the state's environmental resources are protected. For example, many permits are expired or were never issued and many self-monitoring reports were not submitted or could not be located.
- ❖ LDEQ cannot easily provide reliable information on whom it regulates.
- ❖ LDEQ enforcement may not ensure that environmental resources are adequately protected through the appropriate identification of violations, the issuance of timely actions, the escalation of actions when facilities have repeat violations and the ability to assess and collect penalties.
- ❖ LDEQ's use of beneficial environmental projects (BEPs) and other negotiated settlements do not appear to effectively penalize facilities.
- ❖ LDEQ's resolution of complaints is not timely, and the public's satisfaction with LDEQ's handling of complaints is low.
- ❖ Public documents are not easily accessible. Many documents were missing, misfiled in physical files or misindexed in electronic files.
- ❖ Nearly \$11 million in fees remains uncollected because of poor billing and collection practices.

Daniel G. Kyle,
Ph.D., CPA, CFE

Legislative
Auditor

Is DEQ protecting the residents and environmental resources of the state through its monitoring functions?

What We Found

- ➔ LDEQ cannot easily provide reliable information on whom it regulates. We had to use multiple sources of information to compile complete lists of permitted facilities.
- ➔ LDEQ has not issued 38% of the remaining initial Title V air permits. Also, LDEQ has not issued 66% of water permits it has committed to EPA to issue.

- ➔ Many facilities are operating under expired permits. The following shows the percentages of expired permits by media:



- ➔ 69% of major water facilities
- ➔ 34% of individual minor water facilities
- ➔ 55% of hazardous waste units
- ➔ 73% of solid waste facilities

- ➔ Eighteen percent (18%) of the solid waste facilities that were issued orders to close are still open, and 54% of the solid waste facilities that were issued orders to upgrade have not been upgraded.



- ➔ LDEQ conducted most of its inspections as required by its policies. However, LDEQ did not conduct 23% of the required inspections for solid waste municipal and construction/demolition landfills and 31% of the required inspections for minor water facilities.
- ➔ Twenty-six percent (26%) of self-monitoring reports for water and 22% of self-monitoring reports for air were either never submitted to LDEQ by the facilities or could not be located by LDEQ.

- ➔ LDEQ does not routinely compare annual emissions inventory statements with permitted limits in order to determine if facilities have excess air emissions.



Recommendations

- ✓ LDEQ should ensure that all of its data systems contain complete, up-to-date, and accurate data on all facilities that it regulates.
- ✓ LDEQ should develop and follow a plan to meet its permit issuance commitments to EPA and renew expired permits according to its established schedule.
- ✓ LDEQ should develop an accurate and reliable method to track solid waste temporary permits.
- ✓ LDEQ should develop a policy for inspecting facilities with air permits.
- ✓ LDEQ should implement a policy to review self-monitoring data for water and air.
- ✓ LDEQ should implement a system to routinely review annual air emissions statements for emissions in excess of permitted limits. LDEQ should consider tracking variances electronically in order to determine if those excess emissions were allowed by LDEQ.

Matter for Legislative Consideration

- ✓ The legislature may wish to consider revising R. S. 30:2012 to modify the annual inspection requirement. The legislature should consider EPA's inspection guidelines in revising the statute.

Is LDEQ protecting the residents and environmental resources of the state through its enforcement functions?

What We Found

- ➔ LDEQ did not issue enforcement actions for the following violations:
 - ➔ 31% of inspection violations for water
 - ➔ 38% of water monitoring violations
 - ➔ 25% of air monitoring violations
- ➔ The performance indicator in fiscal year 2001 executive budget on timeliness of enforcement actions is misleading and its usefulness is questionable for providing information to the legislature about the performance of the Enforcement Division.
- ➔ LDEQ did not escalate enforcement actions in many cases where repeat violations occurred. For example, 76% of air enforcement actions and 57% of water enforcement actions were not escalated.
- ➔ Enforcement of incidents is handled inconsistently by LDEQ. Less severe enforcement actions were issued for water violations than for air violations, even though more violations were cited for water actions.
- ➔ LDEQ has not collected 75% of monetary penalties assessed between fiscal year 1999 and fiscal year 2001. LDEQ assessed a total of 171 penalties during this period, totaling approximately \$6 million. However, LDEQ has not collected \$4.5 million.



- ➔ Many BEPs and other negotiated settlements do not effectively penalize facilities that commit violations. For example, some of these settlements:

- ➔ Cost less than the original penalty amount
- ➔ Appeared to provide some economic or operational benefit to the violator
- ➔ Included projects or donations to non-environmental projects
- ➔ Were completed before the final settlement agreement was approved

Recommendations

- ✓ LDEQ should either revise its performance indicator on the timeliness of enforcement actions or include an explanatory footnote that explains what actions are being reported on.
- ✓ LDEQ should ensure that enforcement actions are issued consistently among media.
- ✓ LDEQ should not approve BEPs where the penalty and the BEP is less than the original penalty.
- ✓ LDEQ should require that facilities submit evidence of economic benefits, including tax savings, as part of future BEP settlement agreements.
- ✓ LDEQ should require all facilities to submit reports outlining the completion date and documentation on the net amount spent on BEPs. LDEQ should also physically inspect projects to ensure their completion.
- ✓ LDEQ should issue enforcement actions within its established time frames.

Matter for Legislative Consideration

- ✓ The legislature may wish to reexamine the BEP policy to ensure that BEPS are working as intended.

Does LDEQ's complaint process instill public confidence through timely and thorough resolution of complaints?

What We Found

- ➔ One-third of complaints were not addressed timely.
- ➔ Eight of the 10 complainants sampled were not satisfied with LDEQ's handling of their complaints.
- ➔ LDEQ did not issue enforcement actions for 33% of complaints in the sample that appeared to have violations.



Recommendations

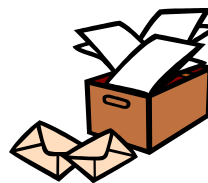
- ✓ LDEQ should ensure that it resolves complaints timely.
- ✓ LDEQ should properly address violations discovered during complaint investigations.

Public Access and Billing Procedures

What We Found

- ➔ Public documents are not easily accessible at LDEQ. Thirteen percent of requested air files could not be found.

- ➔ LDEQ's electronic filing system, ALPS, is not easy to use and LDEQ public access room staff could not find many electronic documents we requested.



- ➔ LDEQ's billing and collection procedures are inefficient and do not ensure accurate billing and collection of fees.
- ➔ LDEQ does not assess any late fees on past due accounts because its billing system does not have the capability to assess them.
- ➔ LDEQ had \$10.8 million in outstanding fees as of December 2001.

Recommendations

- ✓ LDEQ should closely monitor all records management functions to ensure that records are properly stored both physically and electronically and are easily accessible.
- ✓ LDEQ should establish a uniform billing and collection mechanism that ensures that companies are properly billed and that they make timely payments.

Louisiana Legislative Auditor

1600 N. 3rd Street
P.O. Box 94397
Baton Rouge, LA
70804-9397

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225-339-3800.

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STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Environmental Quality
Baton Rouge, Louisiana

March 2002



Performance Audit

Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor

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Department of Environmental Quality

March 2002



**Performance Audit
Office of the Legislative Auditor
State of Louisiana**

**Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor**

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DANIEL G. KYLE, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET
POST OFFICE BOX 94397
TELEPHONE: (225) 339-3800
FACSIMILE: (225) 339-3870

March 1, 2002

The Honorable John J. Hainkel, Jr.,
President of the Senate
The Honorable Charles W. DeWitt, Jr.,
Speaker of the House of Representatives

Dear Senator Hainkel and Representative DeWitt:

This performance audit report gives the results of our performance audit of the Department of Environmental Quality. This audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended.

This report contains our findings, conclusions, and recommendations. It also includes two matters for legislative consideration. I hope this report will benefit you in your legislative decision-making process.

Sincerely,

Daniel G. Kyle, CPA, CFE
Legislative Auditor

DGK/dl

[DEQ02]



Office of Legislative Auditor

Performance Audit Department of Environmental Quality Executive Summary

The Louisiana Department of Environmental Quality (LDEQ) is the primary state agency concerned with environmental protection and regulation. This performance audit focused on the Offices of Environmental Services and Environmental Compliance in regard to the four main media: water, air, hazardous waste, and solid waste. The results of this performance audit are as follows:

Monitoring Functions *(See pages 5 through 18 of the report.)*

- LDEQ cannot easily provide accurate information about whom it regulates.
- LDEQ has not issued 66% of the water permits it committed to EPA to issue; in addition, many facilities are operating under expired permits. Sixty-nine percent of major water facility permits and 73% of all solid waste facility permits are expired.
- LDEQ conducted most required inspections except for minor water inspections and solid waste inspections.
- Twenty-six percent of the required self-monitoring reports in our sample for water and 22% of the required reports for air in our sample were not submitted to LDEQ or could not be located at LDEQ.

Enforcement Functions *(See pages 19 through 32 of the report.)*

- We found that some violations did not receive enforcement actions and some enforcement actions were not escalated when the facility continued to have the same or similar violation.
- Eighty percent of the formal water enforcement actions in our sample were issued over 150 days after the violation occurred.
- LDEQ has not collected nearly \$4.5 million or 75% of the monetary penalties assessed in fiscal years 1999, 2000, and 2001.
- Beneficial environmental projects and negotiated settlements may not effectively penalize facilities.

Complaint Resolution Process *(See pages 33 through 38 of the report.)*

- One-third of complaints in our sample were not handled within five days from when LDEQ received the complaint.
- Some complaints in our sample appeared to involve a violation; however, no enforcement action was issued.
- Most complainants in our sample were dissatisfied with LDEQ's handling of complaints.

Other Issues *(See pages 39 through 44 of the report.)*

- Many vital documents could not be located, were misfiled in physical files or were indexed incorrectly in electronic files.
- Nearly \$11 million in fees remains uncollected because of poor billing and collection practices.

Introduction

Audit Initiation and Objectives

Louisiana Revised Statute (R.S.) 24:513(D)(2) directs the Legislative Auditor to conduct performance audits, program evaluations, and other studies to enable the legislature and its committees to evaluate the efficiency, effectiveness, and operations of state programs. In addition, several organizations expressed concern over certain Louisiana Department of Environmental Quality (LDEQ) activities. In accordance with this legislative mandate and concern over LDEQ activities, we conducted a performance audit of the LDEQ's permitting, monitoring, enforcement and complaint processes. The audit scope and methodology are described in Appendix A. The audit objectives are as follows:

1. **Is LDEQ protecting the residents and environmental resources of the state through its monitoring functions?**
2. **Is LDEQ protecting the residents and environmental resources of the state through its enforcement functions?**
3. **Does LDEQ's complaint process instill public confidence through timely and thorough resolution of complaints?**

Background

R.S. 30:2011 creates the LDEQ as the primary agency concerned with environmental protection and regulation. LDEQ carries out its activities through three main offices. These offices and their primary functions are described below.

1. **Office of Environmental Services** issues permits consistent with laws and regulations.
2. **Office of Environmental Compliance** conducts inspections, investigates complaints, and issues enforcement actions for violations.
3. **Office of Environmental Assessment** implements environmental regulations, conducts ambient monitoring, and remediates contaminated sites.

LDEQ's Mission

To provide service to the people of Louisiana through comprehensive environmental protection in order to promote and protect health, safety and welfare while considering sound policies regarding employment and economic development.

Source: Fiscal Year 2002 Executive Budget

The department's budget in fiscal year 2001 was approximately \$113 million. Less than one percent of LDEQ's revenue comes directly from the state general fund. The remainder comes from statutory dedications, federal funds, fees and self-generated revenue, and interagency transfers. The department's staff consisted of over 1,000 employees. LDEQ regulates a variety of environmental areas. The primary environmental areas, or media, and a brief description of whom LDEQ regulates through permits follow.

Water

LDEQ issues permits to individual facilities that discharge wastewater and other pollutants into state waters. These facilities are classified as major or minor. Major facilities discharge over one million gallons per day while minor facilities discharge less than one million gallons per day.

LDEQ also issues general permits. These permits cover categories of facilities, such as oil and gas facilities and sanitary dischargers. In these cases, LDEQ issues one permit and facilities apply for coverage under that general permit.

The United States Environmental Protection Agency (EPA) granted LDEQ primacy of the National Pollutant Discharge Elimination System (NPDES) program in 1996. As a result, LDEQ acts on behalf of the EPA to issue permits and oversee activities in this area.

Air

There are three types of air facilities in Louisiana. Facilities that emit over 99.5 tons per year of any one pollutant (major sources), facilities that emit 24.5 - 99.4 tons per year of any one pollutant (minor sources), and facilities that emit 24.4 or less tons per year of any one pollutant (small sources). LDEQ issues five types of air permits to these facilities:

- § State Permits
- § Acid Rain
- § Title V Operating
- § Air Toxics
- § New Source Review (NSR) - includes Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR)

Title V permits are considered “umbrella” permits, in which other permits are incorporated. In Louisiana, PSD and Acid Rain permits are still stand alone permits. EPA approved Louisiana’s Title V program in 1995.

Hazardous Waste

LDEQ issues permits to facilities that treat, store or dispose of hazardous waste. LDEQ also oversees generators of hazardous waste, although these facilities are not required to have permits. LDEQ received final authorization from the EPA under the Resource Conservation and Recovery Act (RCRA) to implement the base Hazardous Waste Management Program on February 7, 1985. One facility generally has several different units, such as a container storage area, storage tanks and incinerators. While each facility has an operating permit, each unit can be permitted at different times.

Solid Waste

Solid Waste is a state program with no oversight from EPA. LDEQ issues standard permits to facilities that are classified as follows:

- § Type I: Industrial disposal facilities, including landfills, surface impoundments, and landfarms
- § Type I-A: Industrial processing facilities (incinerators, compactors, transfer stations)
- § Type II: Non-industrial disposal facilities
- § Type II-A: Non-industrial processing facilities
- § Type III: Construction/demolition debris and woodwaste landfills, separation facilities, and composting facilities

Issues for Further Study

Effect of Internal Changes on Productivity at LDEQ

We interviewed several LDEQ staff who said that reengineering and the new integrated data management system, Tools for Environmental Management and Protection Organizations (TEMPO), have decreased employee morale and productivity at the department. For example, some permit writers have said that it takes longer to write a permit in TEMPO than it did with the previous method. Because TEMPO and reengineering are relatively new (1999), we did not evaluate their effect on the department. However, the legislature may wish to consider reviewing the effects of TEMPO and reengineering on the productivity and morale of the department.

Processes Surrounding Remediation of Contaminated Sites

We received information of LDEQ's handling of one contaminated site. This example involved a water body that was contaminated with high amounts of metals and other pollutants. However, LDEQ allowed the facility to conduct its own risk assessment on the degree of contamination as well as suggested methods to remediate the site. According to several state and federal organizations, this risk assessment was based on unsound sampling techniques and a faulty methodology. In addition, instead of suggesting a remedy for the contamination, the facility agreed to only continuing to monitor the site.

Because of limited time and resources, we were unable to evaluate LDEQ's processes for remediating contaminated sites. Therefore, the legislature may wish to consider reviewing these processes to answer the following questions:

- § How does LDEQ determine what sites need remediation?
- § What criteria does LDEQ use or require facilities to use to develop remediation plans?
- § How does LDEQ evaluate whether these sites are sufficiently remediated?

Functions and Duties of LDEQ Employees

Throughout the audit, we had difficulties determining who was accountable for certain programs. Reengineering appears to have resulted in confusion among staff as to their job duties. In some cases, we spoke with individuals who did not know what their specific job titles were. Therefore, the legislature may wish to consider a study to determine the various functions and duties of LDEQ employees.

Objective 1: LDEQ's Monitoring Functions

Is LDEQ protecting the residents and environmental resources of the state through its monitoring functions?

LDEQ's permitting activities and regulation of self-monitoring may not ensure that the state's health and environmental resources are protected. Permits form the foundation of the regulatory process. Permits include the following information:

- § The amount and types of pollutants that facilities may release into the environment
- § How facilities will monitor those releases
- § How facilities will stay within their permitted limits

First, LDEQ often has difficulty providing reliable information on whom it regulates. We encountered various problems in our attempts to obtain accurate and complete information on permitted facilities. For example, the database used to input information on hazardous waste facilities (RCRAInfo) contains many errors and there is no formal method to track solid waste temporary permits. These situations cause us to question LDEQ's ability to effectively track these facilities.

Second, many permitted facilities in the state are operating under expired permits. As a result, many facilities in the state may be operating under permit requirements that are less stringent than current regulations. Not only are many permits expired, but also LDEQ has a backlog of new permits to issue. As of October 31, 2001, LDEQ has not issued 38% of the remaining initial Title V air permits. For water permits, LDEQ has not issued 66% of the permits that it committed to EPA to issue. We also found some cases where LDEQ issued solid waste facilities orders to close but has not tracked these facilities to ensure that they are closed.

Third, LDEQ does not ensure that self-monitoring reports are submitted and maintained. LDEQ uses several tools to determine compliance including self-monitoring reports and inspections. We found that many required self-monitoring reports in our sample were either not submitted or could not be located. As a result, LDEQ does not know whether these facilities are in compliance with the self-monitoring requirements of their permits. Furthermore, LDEQ does not routinely review certain self-monitoring reports to determine if these reports show violations. We found that reports in our sample showed violations of permitted limits for air and water.

Fourth, we found that LDEQ conducts most inspections as scheduled except for solid waste facilities and minor water facilities. LDEQ did not conduct 18% of inspections of solid waste facilities and 31% of inspections for minor water facilities. Therefore, LDEQ may not be ensuring that these facilities are operating according to their permits. In addition, LDEQ does not have formal criteria for the number of inspections required for air permitted facilities.

Finally, LDEQ does not routinely compare annual emissions statements submitted by air permitted facilities to permit requirements to determine if these facilities are in compliance with their permits. By not routinely checking these statements for excess emissions, LDEQ is not fully ensuring that these facilities are in compliance with their permits and that the state's resources and residents are protected from unpermitted levels of pollution.

LDEQ may not be fully protecting the health and environmental resources of the state because of the deficiencies in its monitoring activities. Facilities operating with expired permits may harm the environment because they could be operating under outdated and less stringent requirements. In addition, when LDEQ does not inspect facilities or review facilities' self-monitoring data, the department has no effective mechanism for knowing if those facilities are operating within their permitted limits.

Exhibit 1 below summarizes our main findings related to LDEQ's monitoring functions for each media.

Exhibit 1

Summary of Monitoring Functions Findings

Media	Population Regulated (approximate)	Number of Permits Expired	Inspections Not Conducted	Self-Monitoring Data
Water	256 majors; 6,264 minors	69% majors; 49% individual minors ¹	6% of majors 31% of minors	26% of reports in our sample not received or not in LDEQ's files
Air	4,800	24% of Title V permits	Cannot determine	22% of reports in our sample not received or not in LDEQ's files
Hazardous Waste	66 treatment, storage and disposal facilities	54% of permitted units	3%	3% of reports in our sample not received or not in LDEQ's files
Solid Waste	219 standard permits	73% of facilities	18%	4% of reports in our sample not received or not in LDEQ's files

¹ Minors not covered under general permits.

Source: Prepared by legislative auditor's staff using audit findings.

Recommendation 1: LDEQ should ensure that all of its data systems contain complete, up-to-date, and accurate data on all facilities that it regulates.

Management's Response: The department agrees with this recommendation. LDEQ is actively working toward making sure all regulated facilities in each media are accounted for in LDEQ's electronic system known as Tools for Environmental Management and Protection Organizations (TEMPO).

A major attempt to consolidate all LDEQ legacy systems into one overall departmental system was initiated by developing TEMPO. Our goal is to establish TEMPO as the primary information management system for the department.

Recommendation 2: LDEQ should develop and follow a plan to meet its permit issuance commitments to EPA and to renew expired permits according to its established schedule.

Management's Response: The department partially agrees with this recommendation. LDEQ is currently working on a plan to facilitate the issuance of the remaining 315 Initial Title V air permits as well as issuing renewal permits. We have committed to EPA to issue the remaining initial permits by December 31, 2003. The department has also entered into negotiations with EPA for a National Level of Effort contract, in which federal dollars will be used to engage a contractor to assist in the drafting of major and minor water permits over a two-year period. Until these negotiations are complete, LDEQ is utilizing all available resources to issue as many water permits as possible in a responsible fashion.

Recommendation 3: LDEQ should establish an accurate and reliable method to track solid waste temporary permits.

Management's Response: The department agrees with this recommendation. As a result of our business process reengineering efforts within the agency, LDEQ has worked to resolve issues surrounding these temporary permits. We acknowledge that many temporary permits have been issued since 1993. Before the audit, we began a project to develop a list of all the solid waste facilities that have permit actions pending. Each facility is being reviewed to determine its current status and a decision will be made as to how we will proceed with the permitting process. Some of these facilities have completed all of the necessary steps required for permit issuance and final permit decision will be made for these facilities.

Recommendation 4: LDEQ should develop a policy for inspecting facilities with air permits.

Management's Response: The department agrees with this recommendation. LDEQ currently has a procedure in place to inspect facilities with air permits. Management staff in each of the six regional offices has been provided with the EPA "Compliance Monitoring Strategy" (CMS) for air quality inspections. Regional management staff develops their own annual list of sources to inspect since they are in the best position to determine what sources need the most attention. These plans are reviewed by headquarters staff for level of effort purposes and incorporated into the department's operational plan. Headquarters staff focused current planning to stress inspecting large industrial sources annually, inspecting a high number of sources in the non-attainment areas of the

State, and inspecting smaller sources based upon the types of pollutants emitted and on complaint and upset history.

Recommendation 5: LDEQ should implement a policy to review self-monitoring data for air and water.

Management's Response: The department agrees with this recommendation. LDEQ currently has an established procedure in place to review self-monitoring data submitted by permitted entities for air and water. These procedures have identified noncompliant facilities and have resulted in the referral of many noncompliant facilities for enforcement action.

Recommendation 6: LDEQ should implement a system to routinely review annual emissions statements for emissions in excess of permitted limits. LDEQ should consider tracking variances electronically in order to easily determine if those excess emissions were allowed by LDEQ.

Management's Response: The department agrees with this recommendation. LDEQ will take steps to initiate a process for the review of annual emissions statements for exceedances [excess emissions] of permitted limits.

Matter for Legislative Consideration: The legislature may wish to consider revising R.S. 30:2012 to modify the annual inspection requirement. The legislature should consider EPA's inspection guidelines in revising this statute.

LDEQ Cannot Easily Provide Reliable Information on Whom It Regulates

We encountered various problems in our attempts to obtain accurate and complete information on the number of permitted facilities. We often had to use multiple sources of information, including searching LDEQ databases and contacting LDEQ's regional staff to determine what facilities had permits. These sources often gave conflicting information on the status of these facilities. LDEQ's inability to produce accurate information raises questions as to the quality of LDEQ's general oversight over these facilities. According to LDEQ staff, its new integrated data management system called Tools for Environmental Management and Protection Organizations (TEMPO) will merge all data currently kept in its various databases into one centralized system. However, EPA's databases cannot communicate with TEMPO. Therefore, LDEQ staff still have to enter data into the Permit Compliance System, the Compliance Data System, and RCRAInfo in addition to TEMPO. According to LDEQ, a request for a proposal is pending to design interface software so that TEMPO will be able to communicate with EPA's databases.

Specific problems related to each media are listed below.

Water

Information on major and minor permitted facilities is kept in at least two databases: Permit Compliance System (PCS) and Permit Tracking System (PTS). PCS is used to track the compliance of water permits. PTS contains permit level information that is used to bill facilities for fees. These databases do not reconcile. For example, we requested a list of active permitted facilities and the dates their permits were issued. Two LDEQ databases showed the following numbers of facilities with water permits.

<u>Type</u>	<u>PCS</u>	<u>PTS</u>
Majors	252	249
Minors	4,586	6,264

Because of data discrepancies, we had to use a combination of the above two databases and conversations with regional and headquarters staff to reconcile these differences.

Air

Data on air permitted facilities are kept in the Compliance Data System, which is uploaded to an EPA database. We did not have any problems generating a list of open permitted facilities for our audit work. However, during our file review, we discovered that one of the facilities in our sample of 45 that was listed as open in the database as of November 20, 2001, had been dismantled and removed in 1996. Therefore, we cannot be sure that all of the facilities listed as open in the database are actually open.

Solid Waste

We obtained data on solid waste permits from a variety of sources. For standard permits, we had to establish the universe using information from the Permit Division, Surveillance staff, and regional offices. For temporary permits, we had to reconcile three different lists of information. One of these lists was a handwritten logbook. The person who maintained this logbook resigned during our audit; therefore, we could not follow up with her on the reconciliation of the lists.

Hazardous Waste

We did not have major problems obtaining data for hazardous waste facilities since we only used data from the EPA database, RCRAInfo. However, the accuracy of RCRAInfo data that we did receive is questionable. LDEQ's internal auditors released a report in October 2001 that found many inaccuracies in RCRAInfo data. In March 2001, LDEQ received a report from EPA of over 3,000 errors with data. According to the internal audit report, these errors were the result of a lack of available codes and EPA and LDEQ data

entry errors. Some of these errors include showing that a permit is inactive when it is not and entering a site as closed before it even applied for a permit.

Permit Issuance Commitments Not Met

LDEQ has not issued 66% of water permits and 38% of air permits that it has committed to EPA to issue. Therefore, LDEQ is not ensuring that facilities receive timely permits, which may result in facilities operating without the proper permits.

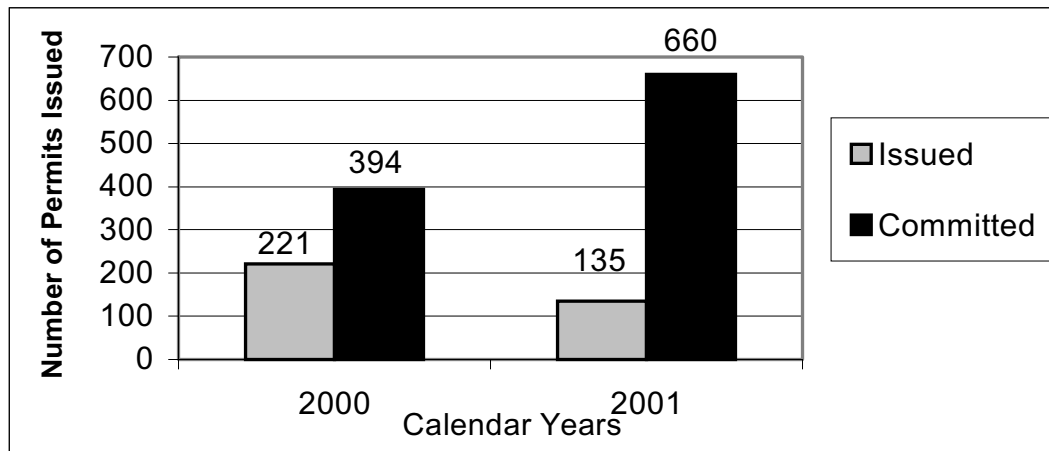
Water

EPA delegated the National Pollutant Discharge Elimination System (NPDES) permitting program to LDEQ in August 1996. As part of this delegation, LDEQ agreed to issue 20% of the universe of permits each year. However, according to EPA's federal fiscal year 2001 End of Year Review, LDEQ has never issued 20% of its permitting universe in any year. For example, in calendar year 2000, LDEQ agreed to issue 394 major and minor individual permits and in calendar year 2001, it agreed to issue 660 of these permits. However, as of August 2001, LDEQ has only issued 356 permits (34%) for both years. As a result, EPA has expressed strong concern over LDEQ's effective administration of the water permitting program. According to LDEQ, it permitted an additional 800 facilities during this time period under general permits. However, the commitment to EPA did not include general permits. Exhibit 2 on the following page compares the total number of individual water permits (includes majors and minors) committed to the number that LDEQ actually issued.

Air

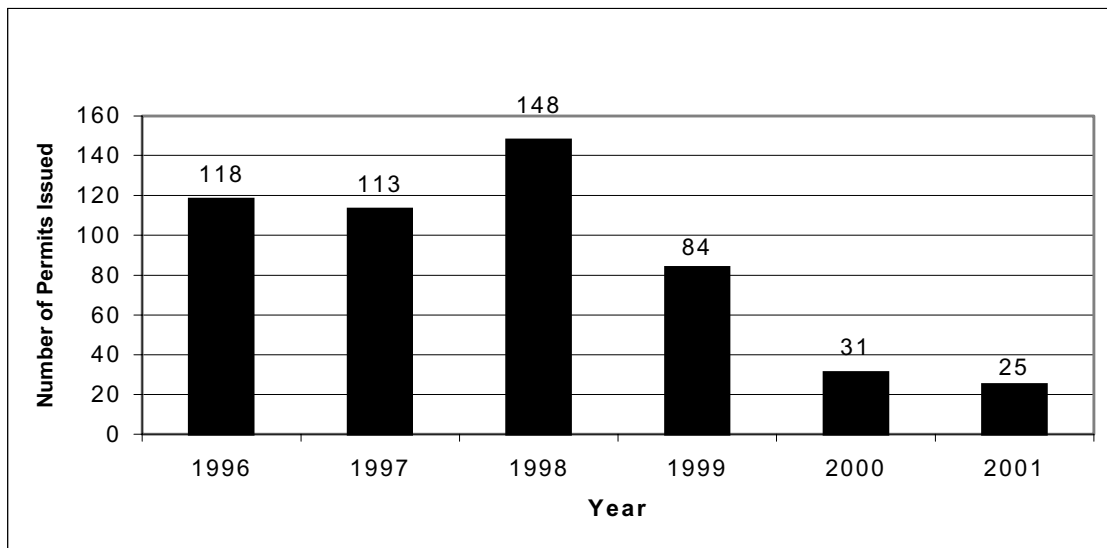
EPA approved the Clean Air Act Title V permit program in 1995. Facilities that met the conditions to receive a Title V permit were required to submit an application by October 1996. EPA originally asked all states to issue the Title V permits within three years of obtaining approval--for LDEQ this would have been 1998. Many states had difficulties meeting this deadline. EPA Regional Offices have now asked all states to complete issuing initial Title V permits by December 2003. According to LDEQ, it has 315 initial Title V permits left to issue and has verbally agreed to issue these permits by December 2003. However, LDEQ has not told EPA how it intends to issue the remaining permits. To issue the remaining permits, LDEQ will have to issue approximately 157 initial Title V permits a year for the next two years. Exhibit 3 on the following page shows how many initial Title V permits LDEQ has issued since the inception of the Title V program.

Exhibit 2**Number of Individual Water Permits LDEQ Issued Compared to Commitment**



Source: Prepared by legislative auditor's staff using EPA's 2001 end of year audit.

Exhibit 3**Number of Title V (Air) Permits Issued by LDEQ**



Source: Prepared by legislative auditor's staff using data from LDEQ.

LDEQ has saved the most complicated Title V permits and those that take the longest to write until last. In addition, Title V permits are valid for five years; therefore, beginning in 2001, the permits already issued have begun to expire and are coming in for renewal.

According to LDEQ, one reason for the backlog in issuing permits is the high turnover experienced by its Permit Division. Specifically, the reengineering of the department resulted in the loss of key senior and other staff who had permit writing experience. In addition, some permit writers have indicated that writing permits in TEMPO takes longer than the previous method of writing permits.

Many Facilities Operating Under Expired Permits

Many water permits, solid waste permits, and hazardous waste permits have expired. Exhibit 4 below shows the percentage of expired permits by media and the frequency in which permits must be renewed.

Exhibit 4

Expired LDEQ Permits by Media

Media	Percent of Expired Permits	Duration of Permit
Water	69% of major facilities 49% of individual minor facilities	5 years
Air	11% of initial Title V permits issued	5 years
Hazardous Waste	54% of units within treatment, storage and disposal facilities	10 years
Solid Waste	73% of all solid waste facilities	10 years

Source: Prepared by legislative auditor's staff using data from LDEQ.

In a recent audit, EPA stated that the backlog of issuing permits is a critical issue. EPA expressed concern that a large percentage of state waters are reported as impaired while facilities may not have current and effective permits that establish conditions to protect these waters from further impairment.

However, state regulations allow LDEQ to administratively continue permits if LDEQ receives the application before the permit expires. This regulation allows facilities to operate under the previous permit until LDEQ can issue a new one. However, allowing facilities to operate under expired permits may result in facilities operating with less stringent permit requirements. Since laws and regulations change frequently, facilities may not be operating under the most current requirements. In addition, administratively continuing the permit may result in LDEQ not issuing the permit for several years.

Similar to the backlog of issuing new permits, one reason for the high number of expired permits is the high turnover experienced by the department. Specifically, many permit writers with historical knowledge of permits resigned after reengineering.

Over 18% of Hazardous Waste Units Operating Under Interim Status

We analyzed permit issue dates for 66 facilities that treat, store or dispose of hazardous waste. These 66 facilities had a total of 431 permitted units. One facility generally has several different units, such as a container storage area, storage tanks and incinerators. Of those units, 18% were operating under interim status. According to LDEQ, interim status is granted until LDEQ can issue a standard permit. Interim status is generally granted when new regulations are promulgated and allows the facility to operate until LDEQ issues a standard permit.

For example, state regulations governing Boiler/Industrial Furnaces (BIFs) were promulgated in 1991. All of the facilities with BIF units are under interim status. However, LDEQ has not yet issued a standard permit for any of these units. According to LDEQ, it is waiting on EPA to take further action before writing the final permit conditions.

Many Solid Waste Facilities Ordered to Close or Upgrade Still Open

According to LDEQ data from fiscal year 1993 until the time of our work, LDEQ has issued approximately 293 temporary permits to solid waste facilities. These temporary permits can be either an order to upgrade a facility or an order to close a facility. Facilities that are ordered to upgrade must make improvements or modifications to their facility before a standard permit can be issued. Facilities that are ordered to close are required to submit a closure plan to LDEQ detailing how the facility will be closed. Generally, temporary permits are valid for three years. However, we found the following:

Orders to Close

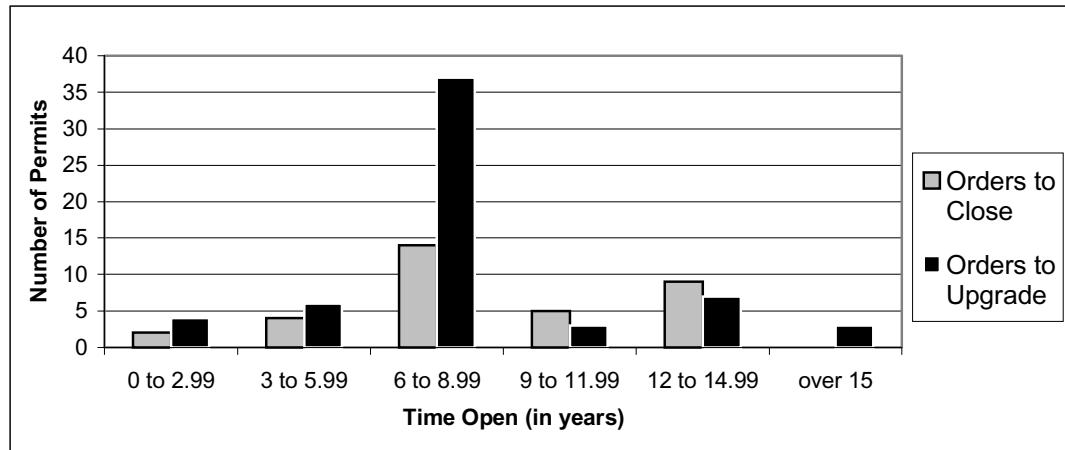
- § Eighteen percent of the units within facilities that were issued orders to close are still open. Ninety-four percent of these have been open over three years.
- § The units that are closed took an average of 3.9 years to close.

Orders to Upgrade

- § Fifty-four percent of the units within facilities issued orders to upgrade are still not upgraded. Ninety-three percent of these were ordered to upgrade over 3 years ago.
- § The units upgraded because of orders took an average of 3.2 years to upgrade.

Exhibit 5 below shows how long temporary permits have been open.

Exhibit 5
Solid Waste Facilities
Temporary Permits Not Closed and Not Upgraded
As of December 2001



Source: Prepared by legislative auditor's staff based on analysis of LDEQ data.

Based on our review and our attempts to obtain data on temporary permits, we found that LDEQ does not have a formal method of tracking these permits. We tried several times to obtain an accurate and current list of all temporary permits. After receiving several different lists that did not reconcile, we eventually obtained a list from LDEQ's Fiscal Division that was used to generate invoices for temporary permits. The lack of a formal tracking mechanism for these permits results in no one at LDEQ knowing the status of these temporary permits. Consequently, there may be facilities that have been ordered to close but are still open and operating with little oversight from LDEQ.

According to LDEQ, these permits are considered a low priority. However, if LDEQ ordered sites to close, then it should at least track these sites to ensure that they are closed or working toward closure.

LDEQ Conducted Most of Required Inspections in Fiscal Years 2000 and 2001

We analyzed inspection dates for all permitted facilities in each media and found that LDEQ conducted most of the required inspections for major water facilities and hazardous waste facilities. However, LDEQ did not conduct the required inspections for solid waste landfills and minor water facilities. We found that LDEQ did not conduct 23% of the required inspections on municipal and construction/demolition landfills. In addition, 17% of solid waste facilities did not receive any inspections during fiscal year

2000. Furthermore, 31% of minor water facilities were not inspected every three years as required. As a result, LDEQ is not ensuring that these facilities are complying with their permits.

R.S. 30:2012 requires that LDEQ conduct an inspection of all permitted facilities annually. However, we did not evaluate the department based on this requirement because it may be unreasonable to expect the department to conduct that many inspections on every permitted facility. However, we did evaluate the department based on its own inspection policy. Exhibit 6 below summarizes the media, inspection frequency, and the percent of inspections conducted for fiscal years 2000 and 2001.

Exhibit 6
Inspection Frequency and Percent Conducted by Media
For Fiscal Years 2000 and 2001

Media	Inspection Frequency LDEQ Policy	Percent of Inspections Conducted
Water	Majors - Annually Minors - Every 3 years	96% of majors 69% of minors
Air	No Criteria	N/A
Hazardous Waste	Annually	97% of treatment, storage and disposal facilities
Solid Waste	Municipal and construction/demolition- debris landfills - 4 times a year	77% of municipal and construction/demolition debris landfills
	Industrial landfills and other facilities - annually	94% of industrial landfills and other facilities

Source: Prepared by legislative auditor's staff based on analysis of LDEQ data.

While LDEQ conducted most inspections, we had to gather inspection dates from a variety of sources to determine whether these inspections were conducted. For example, for water inspections we had to use the Permit Compliance System, the Permit Tracking System, TEMPO, and the regional offices to ensure that inspections were conducted. We found that 63 inspections were not entered into EPA's database. In these cases, the regional offices sent us physical copies of the reports as evidence that the inspection was conducted.

LDEQ lacks formal criteria for the inspection frequency of air permitted facilities. LDEQ does not use the inspection strategy from the Memorandum of Understanding signed in 1998 between EPA and LDEQ because it is not compatible with TEMPO. LDEQ staff said that the current strategy is to focus on conducting annual inspections of most major facilities and try to inspect minor facilities that have received complaints. Currently, LDEQ is working with EPA on a compliance monitoring strategy to target facilities for

inspections. We attempted to contact EPA Region 6 to ascertain what it expects of LDEQ regarding the level of air inspections to be conducted. However, we were not able to contact EPA regarding this issue. Therefore, we determined the actual inspection frequency for air permitted facilities for informational purposes and found the following:

- § Fifteen percent (101 of 676) of all **major** source air facilities went three years or more without an inspection between January 1, 1995, and November 20, 2001.
- § Seven percent (46 of 676) of major source air facilities had not had an inspection at all in at least three years as of November 20, 2001.
- § Seventy percent (1,034 of 1,482) of all **minor** source facilities had one or two inspections between January 1, 1995, and November 20, 2001.
- § Seven percent (100 of 1,482) of all minor source facilities did not have an inspection during the same time span.

Many Required Self-Monitoring Reports for Some Facilities in Sample Not Submitted or Not Located

We found that 26% of the required self-monitoring reports in our sample for water and 22% of the required reports for air in our sample were not submitted to LDEQ or could not be located at LDEQ. As a result, LDEQ does not know whether these facilities are complying with their permits. However, we did find that all but one of the required reports were submitted for hazardous waste and all but two reports were submitted for solid waste.

All facilities must self-monitor to some degree. Self-monitoring is an important part of environmental regulation because these reports provide a mechanism for LDEQ to determine if facilities are complying with their permits. It is especially important for facilities to conduct and submit accurate, timely self-monitoring reports since LDEQ is only able to physically inspect these facilities occasionally. Self-monitoring requirements by media are summarized as follows.

Media Self-Monitoring Requirements

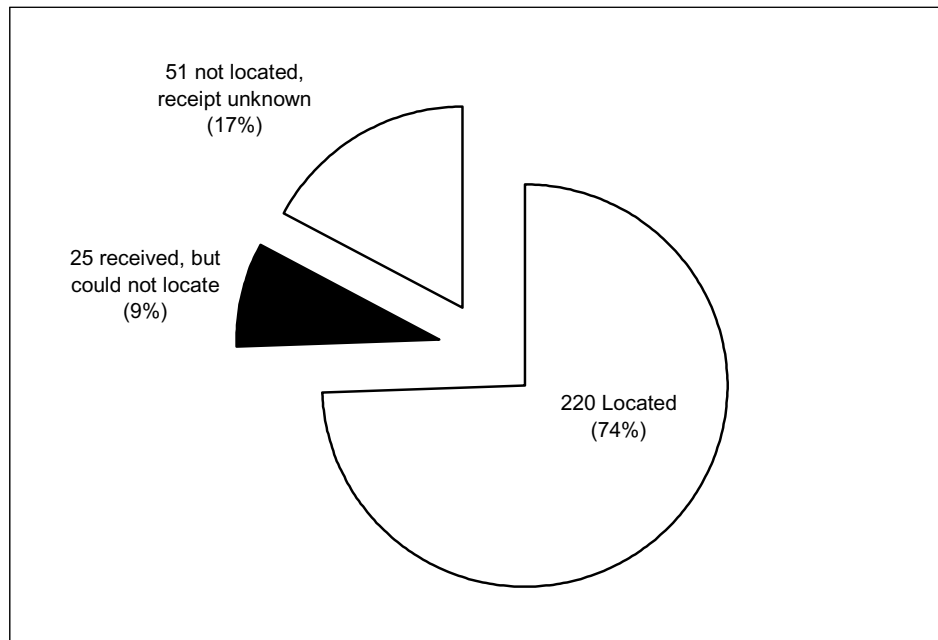
Water	Facilities are required to sample their discharges and submit the results to LDEQ. These results must show that the discharge does not exceed limits specified in the permit. These reports are important because they show daily, monthly or quarterly compliance with their permit.
Air	Self-monitoring requirements are permit specific. Most facilities are required to submit an annual emissions inventory. In addition, a permit may require a facility to submit additional self-monitoring reports.

Hazardous Waste	Facilities are required to submit an annual report that summarizes waste descriptions and codes, quantity of waste generated, and where the waste was shipped. Other self-monitoring data are kept on site, including daily inspections of equipment and hazardous waste manifests.
Solid Waste	Facilities are required to submit annual disposer reports that describe the amount of waste disposed of for that year. Some facilities are also required to submit semiannual groundwater monitoring reports that show the levels of contaminants in groundwater.

Water

We reviewed a sample of 18 water permits for minor facilities. We found that these 18 facilities were required to submit 296 discharge monitoring reports (DMRs) in 1999 and 2000. These reports show whether the facility's discharge meets or exceeds its permitted limits. However, we could not locate 76 (26%) of the required DMRs. Of the missing DMRs, 25 were coded as received in the Permit Tracking System, but no copy was in the file. Exhibit 7 shows how many DMRs were received and how many could not be located.

Exhibit 7
Results of Reviewing a Sample of Water Permit Discharge Monitoring Reports



Source: Prepared by legislative auditor's staff using results of our file review of 296 discharge monitoring reports for 18 water permits.

In a previous performance audit on water quality issued in January 2001, we found that LDEQ was not reviewing DMRs submitted by minor facilities. Therefore, LDEQ did not know whether all required DMRs were submitted or whether these DMRs showed violations. However, according to LDEQ staff, DMRs are currently tracked to ensure that they are received and reviewed for violations.

Air

For air, we reviewed a sample of 45 air permitted facilities. We found that 28 of these facilities were required to submit 228 self-monitoring reports in 1999 and 2000, including annual emissions inventories, compliance certification reports, monitoring reports, and Toxic Emissions Data Inventory (TEDI) reports. However, we could not locate 50 (22%) of these reports after searching through LDEQ's files and providing lists to LDEQ staff to find the documents. According to a tracker system used by LDEQ air enforcement, 17 of the 50 (34%) missing documents were received by LDEQ but could not be located. Furthermore, of the 228 reports, 158 should have been in the file room. Sixty-one percent could not be located in the file room. Of the 158 that should have been in the file room, 49 were found in the LDEQ Enforcement Division.

LDEQ Does Not Routinely Check Annual Emissions Inventory Statements for Excess Emissions

LDEQ does not routinely compare annual emissions inventory statements with permitted limits in order to determine if facilities have exceeded their annual permitted limits. Many facilities are required to submit annual emissions inventory statements that report their annual emissions of certain pollutants. According to LDEQ staff, these statements are not compared to the permitted limits because its current computer system does not have the capability to electronically compare these reports to the permitted limits. By not having a process in place to routinely compare these reports to the permitted limits, LDEQ is not ensuring that these facilities are in compliance with their permits.

In addition, it is possible that emissions over the permit limits (but not over the ambient air standards) were allowed by LDEQ through the issuance of a variance. A company can apply to LDEQ for a variance to allow the company to operate outside of its permit requirements. However, LDEQ does not track variances electronically, so the permit file would have to be checked to determine if a variance was issued. LDEQ staff also said that the permitted limits in state permits do not always include everything the company is allowed to emit, although Title V (air) permits do include everything.

We compared the annual emissions inventory statements to the permitted limits for 40 statements to determine if any of the facilities exceeded their permitted limits. We noted that 15 of 40 (37%) statements reported emissions greater than their permitted limits; however, we did not check for variances to determine if the excess emissions were allowable.

Objective 2: LDEQ's Enforcement Functions

Is LDEQ protecting the residents and environmental resources of the state through its enforcement functions?

LDEQ enforcement may not ensure that health and environmental resources are adequately protected. LDEQ did not always identify and address violations in self-monitoring reports, did not issue enforcement actions within established time frames, and did not escalate enforcement actions when facilities continued to commit the same violations. In addition, LDEQ has not collected nearly \$4.5 million or 75% of the penalties that it assessed during fiscal years 1999, 2000, and 2001. According to the EPA, effective enforcement programs should include the following elements:

- § Appropriate identification of violations
- § Timely issuance of enforcement actions
- § Escalation of enforcement actions when violations recur
- § Ability to assess and collect penalties

In addition, LDEQ's use of beneficial environmental projects (BEPs) and other negotiated settlements does not effectively penalize facilities who violate environmental laws. In many cases, the projects helped facilities to upgrade their own plants or helped them reduce their operating costs. Because LDEQ's enforcement functions are not as effective as they could be, some facilities may not be deterred from committing subsequent violations. Exhibit 8 below summarizes our main findings.

Exhibit 8

Summary of Effectiveness of Enforcement Functions

Media	Did violations receive enforcement actions?	How long did LDEQ take to issue enforcement actions?	Did LDEQ escalate enforcement?	Did LDEQ collect penalties assessed in fiscal years 1999 to 2001?
Water	31% of inspection violations for minor permits and 38% of monitoring violations received no enforcement action	80% issued 150 days or more after violation occurred	57% not escalated for 37 facilities sampled	58% not collected
Air	25% of monitoring violations have no enforcement action	Could not evaluate	76% not escalated for 21 facilities sampled	66% not collected
Hazardous Waste	All inspection violations received enforcement actions	29% issued 180 days or more after violation identified	42% not escalated for 5 facilities sampled	78% not collected
Solid Waste	4% of inspection violations received no enforcement action	34% issued 180 days or more after violation identified	29% not escalated for 31 facilities sampled	98% not collected

Source: Prepared by legislative auditor's staff using audit findings.

Recommendation 7: LDEQ should either revise its performance indicator on the timeliness of enforcement actions or include an explanatory footnote that explains what enforcement actions are being reported on.

Management's Response: The department partially agrees with this recommendation. LDEQ's Operation Plan documents the performance indicator currently reported by the Enforcement Division for percent of applicable enforcement actions addressed within the prescribed time periods called for by appropriate state and/or federal guidelines. The explanation to further define the applicable timeframes used by each media was prepared prior to FY 00-01. See page A.3 of the department's response (Appendix E) for this explanation.

Legislative Auditor's Additional Comments: We reviewed LDEQ's 2002-2003 Operational Plan and found no such explanation in this document.

Recommendation 8: LDEQ should ensure that enforcement actions are issued consistently among media.

Management's Response: The department agrees with this recommendation. The Enforcement Division continuously evaluates the enforcement process for all media to ensure consistency and has made improvements in the consistency of enforcement among all media since reengineering. Each media reviews its program referrals on a case-by-case basis in accordance with the applicable regulatory requirements to determine if a violation has occurred and the appropriate enforcement response. In addition, LDEQ considers the nine factors required by the Environmental Quality Act when evaluating the referrals for all media.

Recommendation 9: LDEQ should not approve BEPs where the penalty and the BEP are less than the original penalty.

Management's Response: The department disagrees with this recommendation. There are several possible reasons why it may be in the best interest of the State to settle a penalty for less than the original amounts, whether a BEP is included or not. See page A.4 of the department's response (Appendix E).

Recommendation 10: LDEQ should require that facilities submit evidence of economic benefits, including tax savings, as part of future BEP settlement agreements.

Management's Response: The department partially agrees with this recommendation. LDEQ will take this recommendation under consideration.

Recommendation 11: LDEQ should require all facilities to submit reports outlining the completion date and documentation on the net amount spent on BEPs. LDEQ should also physically inspect projects to ensure their completion.

Management's Response: The department agrees with this recommendation. The department is currently doing this. LDEQ's settlement agreement standard language in use since mid-2001 requires information and reports concerning BEPs. See page A.5 of the department's response (Appendix E) for the information required in the settlement agreements.

Recommendation 12: LDEQ should issue enforcement actions within its established time frames.

Management's Response: The department partially agrees with this recommendation. The Enforcement Division's performance indicator for issuance of enforcement actions within the appropriate timeframes as outlined in our Operational Plan is being met. We strive to meet this goal each quarter. Because of manpower constraints, we are not able to issue all enforcement actions within the appropriate timeframes and must prioritize the referrals to issue enforcement actions for the more severe violations within the performance indicator timeframes.

Matter for Legislative Consideration: The legislature may wish to reexamine the BEP policy to ensure that BEPs are working as intended and/or increase legislative oversight.

Some Violations Did Not Receive Enforcement Actions

We found several cases where inspections and self-monitoring reports showed violations, but LDEQ did not appear to issue enforcement actions for these violations. As a result, facilities may continue to commit violations.

LDEQ defines a violation as a condition that receives an enforcement action. Therefore, any occurrence that appears to be a violation is not deemed a violation until it is cited in an enforcement action. Current LDEQ policy does not allow inspectors to determine whether what they observe on inspections constitutes a violation. Instead, inspectors must only note "areas of concern" on the inspection report and forward these reports to the Enforcement Division. The Enforcement Division will then determine whether these "areas of concern" are actual violations. According to LDEQ, if these areas of concern receive enforcement actions, then they are considered to be violations.

We interviewed several inspectors who expressed frustration with LDEQ's Enforcement Division for not rigorously pursuing enforcement actions. In some cases, these inspectors recommended enforcement actions, but none were issued. In one specific case, an inspector felt that LDEQ's choice of enforcement action was not severe enough because the facility continued to have the same violations the next year. The new policy of inspectors noting areas of concern may further frustrate regional inspectors who may feel that headquarters does not trust their ability to determine if their observations are violations.

Water

We reviewed 18 minor water permit files and found that 31% of inspections that appeared to have violations (areas of concern) did not have evidence of an enforcement action. In 4 of 13 inspections, the inspector ranked the facility unsatisfactory in one or more areas. According to LDEQ's agreement with EPA, LDEQ is to address unsatisfactory areas with at least a warning letter. However, we found no evidence in the permit files that LDEQ issued warning letters in these cases. In one instance, the inspector visited the site one year and noted violations. When the inspector returned the next fiscal year, the same violations were noted. Therefore, not addressing violations with enforcement actions may result in facilities continuing to violate the terms of their permit. In addition, it may appear to these facilities that LDEQ is neither attentive to or serious about instances of noncompliance.

We also found that of the 220 monitoring reports in the 18 files, 83 (38%) showed that facilities exceeded their permitted limits. When facilities exceed permit limits, they must also submit a noncompliance report (NCR). However, for 90% of the monitoring reports where facilities exceeded their permit limits, the required NCRs were not submitted. Both exceeding permit limits and the nonsubmittal of NCRs are considered violations. However, LDEQ did not appear to take enforcement actions on these violations.

In addition, we found that many violations are still under enforcement review. Sixteen percent of violations (248 of 1,557) in our sample from June 1998 to July 2001 are still under enforcement review and have not had any action taken. According to an LDEQ official, under enforcement review means that LDEQ is reviewing potential violations to determine what enforcement action should be taken or that the violation has been referred to enforcement.

Air

We reviewed 45 permitted air facility files for inspections. We found only 34 inspection reports in the files. According to the Compliance Data System (CDS) database, 85 inspections were conducted in fiscal years 1999 and 2000. Therefore, 60% of the reports were missing from the files. Of the 34 inspection reports we were able to review, only two reported areas of concern. No enforcement actions were in the files related to those areas of concern.

We also found that 25% of self-monitoring reports (excluding annual emissions inventory statements and toxic emissions data inventory reports) showed deviations from permit requirements. We could not determine if 18% of the reports showed noncompliance with permit requirements (i.e., part of the report was missing from the file). However, no enforcement actions were available in the files for any of these instances of noncompliance. Therefore, it appears that LDEQ did not take enforcement actions on any of these instances.

Solid Waste

We reviewed a sample of 15 files for solid waste facilities that had a total of 99 inspections. Four of the inspections had violations (4%); however, LDEQ did not appear to issue an enforcement action for these violations. In some cases the facility immediately corrected the violation. However, we found no evidence that notices of corrected violations were sent to these facilities.

Performance Indicator on Timeliness of Enforcement Actions Is Misleading

To evaluate the timeliness of enforcement actions, we used a performance indicator in the fiscal year 2001 executive budget. This performance standard showed that LDEQ would issue enforcement actions within the following time frames for each media:

- Water - 150 days
- Air - 270 days
- Hazardous Waste - 180 days
- Solid Waste - 180 days

However, upon evaluating the methodology of this performance indicator, two concerns were brought to our attention:

- (1) Not all enforcement actions are included in this indicator.
- (2) Timeliness is calculated differently for each media.

In the executive budget, this performance indicator is followed by a table that shows all of the enforcement actions issued by media for a period of six years. However, the performance indicator only refers to the timely issuance of certain enforcement actions. Because the table of all enforcement actions follows the performance indicator, one assumes that the performance indicator refers to the enforcement actions in the chart. For example, it only includes those air enforcement actions issued for High Priority Violators and those water and hazardous waste enforcement actions for Significant Noncompliance violations. In fiscal year 2000, only 17% of all air enforcement actions were included in the calculation of this performance indicator.

In addition, this performance indicator calculates timeliness different for each media. For air enforcement actions, this performance indicator calculates timeliness beginning when a notice of potential penalty is issued to when a compliance order, penalty assessment or cease and desist order is issued. It is not calculated from when the violation is discovered or when the violation is referred to enforcement. The following exhibit shows how timeliness is calculated and what enforcement actions are included in the calculation.

Exhibit 9**Methodology for Timeliness of Enforcement Action Performance Indicator**

Media	Enforcement Actions Included	Timeliness	
		Starts (Day Zero)	Stops
Water	Actions issued for Significant Noncompliance violations	Date violations are identified on the Quarterly Noncompliance Report	Issue date of enforcement action
Air	High Priority Violators	Issue date of a Notice of Potential Penalty (NOPP)	Issue date of Compliance Order, Penalty Assessment or Cease and Desist Order addressing the NOPP
Hazardous Waste	Significant Non-compliers (facilities considered to have high priority violations)	Last date of the inspection	Issue date of enforcement action
Solid Waste	All enforcement actions	Date the inspection report is received by the Enforcement Division	Issue date of enforcement action

Source: Prepared by legislative auditor's staff using information from LDEQ.

This performance indicator is misleading and its usefulness is questionable for providing information to the legislature about the performance of the Enforcement Division.

For informational purposes, we calculated the difference between the date of the first violation and the date LDEQ issued the enforcement action. We then compared the time it took to issue the action to the performance standard.

Water

About 80% (340 of 423) of our sample of formal enforcement actions were issued over 150 days (5 months) after the violation occurred. We reviewed 423 formal enforcement actions and their corresponding violations from July 1998 to June 2001 obtained from LDEQ's Permit Compliance System. We requested all violations and enforcement actions for this period, but we only received enforcement actions that are open, meaning that the facility has not yet complied with all the terms of the original enforcement action. We found the following:

<u>Elapsed Time</u>	<u>Number</u>	<u>Percent</u>
1 - 5 months	83	20%
5 - 12 months	203	48%
1 - 2 years	93	22%
Over 2 years	44	10%
Totals	423	100%

Air

We were unable to calculate the timeliness of air enforcement actions using our methodology because we could not obtain the dates of the violations addressed by the enforcement actions without obtaining the actual action. LDEQ personnel were unable to provide us the violation dates. As stated previously, the status of LDEQ's file room led us to believe that it would be both time-consuming and futile to look for all of the enforcement actions in the air files.

Hazardous Waste

In our sample, 29% (13 of 45) of hazardous waste enforcement actions were issued 180 days or more (6 months) after the violation was identified. We reviewed 45 enforcement actions and their corresponding violations from July 1998 to June 2001 for 15 hazardous waste facilities in our sample. We found the following:

<u>Elapsed Time</u>	<u>Number</u>	<u>Percent</u>
1 - 6 months	32	71%
6 - 12 months	12	27%
Over 1 year	1	2%
Totals	45	100%

Solid Waste

Thirty-four percent (190 of 553) of all solid waste enforcement actions were issued 180 days (6 months) or more after the violation was identified. We reviewed 553 enforcement actions and found the following:

<u>Elapsed Time</u>	<u>Number</u>	<u>Percent</u>
1 - 6 months	363	66%
6 - 12 months	119	22%
Over 1 year	71	12%
Totals	553	100%

Enforcement Actions Not Escalated

We found that LDEQ did not escalate enforcement actions in many cases for all media. Effective enforcement programs should escalate enforcement actions to a more severe action when a facility continues to commit the same or similar type of violation. If LDEQ does not increase the severity of the enforcement action, facilities have less incentive to correct current violations or prevent future ones.

In general, this means that LDEQ should go from informal enforcement actions to formal actions when the violation continues or recurs. According to EPA, informal actions are those that simply notify the facility of a violation. These include phone calls, warning

letters, notices of violations, and notices of potential penalty. Formal enforcement actions require that the facility correct the violation or prevent subsequent violations. These actions include compliance orders, compliance orders with potential penalties, cease and desist orders, and penalty assessments.

LDEQ does not have consistent criteria among media for when to escalate enforcement actions. We defined escalation as LDEQ issuing a more severe action when a facility continued to commit the same or similar violation.

Specific findings related to each media are summarized as follows.

Water

We reviewed 74 facilities that had two or more enforcement actions issued between July 1998 and June 2001. Of those, we determined that 37 had more than one enforcement action for the same or similar violation. We found that 57% of the cases were not escalated when the facility continued to commit the same or similar violation. For example, we found one case where LDEQ issued a compliance order and notice of potential penalty to a facility for an unauthorized discharge. One year later, LDEQ issued another notice of potential penalty for another unauthorized discharge to the same facility.

Air

We reviewed 121 facilities with multiple enforcement actions issued between July 1998 and June 2001. Of those 121, we were able to determine that 21 had more than one enforcement action for the same or similar violation. Of those 21, we determined that 16 (76%) were not escalated. For example, one facility was assessed a penalty in July 1998 for storing material in two tanks with a high true vapor pressure. In December 1998, the same facility received a notice of violation and potential penalty for storing material in three tanks with a high true vapor pressure. LDEQ did not issue a penalty for this second violation.

Hazardous Waste

We reviewed 12 facilities that had two or more enforcement actions issued between July 1998 and June 2001. Of those, we determined that five had more than one enforcement action for the same or similar violation. We found that 42% of the cases were not escalated. For example, one facility was issued a notice of violation for failing to keep one hazardous waste container closed. About one year later, the same facility received another notice of violation for failing to keep 43 hazardous waste containers closed.

Solid Waste

We reviewed 49 facilities that had two or more enforcement actions issued between July 1998 and June 2001. Of those, we determined that 31 had more than one enforcement action for the same or similar violation. We found that 29% of the cases were not escalated. For example, LDEQ issued a compliance order to one facility for unauthorized dumping. When that facility continued to have the same violation, LDEQ then issued another compliance order.

Enforcement of Incidents Handled Inconsistently

We reviewed all enforcement actions for the 10 companies with the most reported incidents in fiscal year 1999 through fiscal year 2001. Incidents involve unauthorized spills, releases, and discharges to air, water and soil. Facilities that experience incidents are required by law to notify LDEQ both verbally and in writing as to the material released, the amount of material released, and the reason(s) the incident occurred.

These 10 companies had a total of 1,721 releases or spills from fiscal year 1999 to fiscal year 2001. Six of the 10 companies had a total of 12 enforcement actions for various releases during the same time period. However, there appear to be inconsistencies between the way air and water enforcement handle incidents. For example, out of the seven enforcement actions for air incidents, six involved a penalty assessment. However, out of the five enforcement actions for water incidents, none involved a penalty. Water enforcement actions ranged from a warning letter to a compliance order and notice of potential penalty. In addition, three of the water enforcement actions cited five or more violations, while air enforcement actions usually cited only one. Therefore, water enforcement actions seem to result in less severe actions even though more violations were cited in these actions. As a result, LDEQ's choice of enforcement action may not be deterring these facilities from having subsequent preventable releases.

In addition, LDEQ discovered all of these water incidents through a file review and in some cases this file review occurred years after the incidents occurred. For example, one facility had seven spills from 1997 to 2001; however, LDEQ did not cite these incidents in an enforcement action until a file review was conducted in February 2001. According to LDEQ, up until about one year ago, incident reports involving water were not routed to the Enforcement Division. Instead, these reports were filed in the facility file. Therefore, this may be one reason that these incidents were not cited in enforcement actions sooner.

We also reviewed the air permitted facility files of four facilities that had received a penalty assessment for a reported preventable release. We reviewed the files to determine if these facilities had subsequent preventable releases of the same material and did not receive an enforcement action. We found that three of the facilities had incident reports in their files that indicated subsequent preventable releases; however, they did not receive an enforcement action. For example, one facility received a penalty assessment for releasing 795 pounds of ammonia. The facility had subsequent preventable releases

of ammonia of 5,175 pounds, 8,798 pounds, 177 pounds, and 100 pounds that did not receive enforcement actions. In addition, the same facility had preventable releases of anhydrous ammonia and nitrous oxides that did not receive enforcement actions.

While some inconsistencies are necessary because of diverse characteristics of each media, all media should have a uniform and consistent way of addressing certain types of violations. Enforcing one violation and not another does not result in a consistent and fair enforcement function.

LDEQ Has Not Collected Nearly 75% of Monetary Penalties Assessed in Fiscal Years 1999 to 2001

LDEQ assessed 171 penalties totaling approximately \$6 million in fiscal years 1999, 2000, and 2001. However, LDEQ has not collected nearly \$4.5 million (75%) of the penalties it assessed. LDEQ assesses penalties in accordance with its penalty matrix outlined in state regulations. This matrix requires LDEQ to assign points to such factors as the facility's history of noncompliance and the economic benefit realized through noncompliance. These points are then used in a formula to calculate the penalty amount. This penalty matrix helps LDEQ to assess penalties fairly and consistently.

All penalties that LDEQ collects are deposited into the Hazardous Waste Site Cleanup Fund (R.S. 30:2205) unless the balance in the fund is above \$6 million. If the fund is above \$6 million, the penalties collected are transferred into the Environmental Trust Fund (LDEQ's operating monies). According to an LDEQ official, the Hazardous Waste Site Cleanup Fund balance is normally between \$5 and \$6 million.

According to an LDEQ official, the reason that some of these penalties are uncollected is that some cases have been appealed and LDEQ is still waiting on a decision. In other cases, LDEQ settled for a lesser penalty or rescinded the penalty entirely. In cases where facilities refused to pay, LDEQ has made the payment executory (waiting on final order from the court for the facility to pay). However, by not collecting all the penalties assessed, LDEQ is not receiving all money that it is owed for environmental violations. This may also weaken the effect a penalty has on deterring a facility from complying with its permit and the ability of LDEQ to protect the environment. Appendix B details the penalty amount LDEQ assessed for fiscal years 1999 through 2001, the amount LDEQ collected, and where available the reason the penalty has not been collected. Exhibit 10 on the following page summarizes the total penalty amounts that LDEQ assessed and collected by media.

Exhibit 10**Analysis of LDEQ Monetary Penalties
for Fiscal Years 1999 through 2001**

Media	Number of Penalties	Assessed	Paid	Uncollected	Percent Not Collected
Air	102	\$3,058,319.80	\$1,040,976.00	\$2,017,343.80	66%
Water	21	\$834,442.37	\$346,711.37	\$487,731.00	58%
Hazardous Waste	30	\$495,577.69	\$107,004.86	\$388,572.83	78%
Solid Waste	18	\$1,593,454.05	\$28,757.02	\$1,564,697.03	98%
TOTALS	171	\$5,981,793.91	\$1,523,449.25	\$4,458,344.66	75%

Source: Prepared by legislative auditor's office using data from LDEQ Enforcement Division.

Beneficial Environmental Projects and Negotiated Settlements May Not Effectively Penalize Facilities

Many negotiated settlements and beneficial environmental projects (BEPs) do not appear to effectively penalize facilities that commit violations. We found several cases where the facility appeared to have benefited in some way from the project. For example, facilities often paid a lower penalty, settled on projects that were already completed by the facility, or did projects that involved upgrades to their own facility.

BEPs are projects performed by a facility in lieu of, or as part of, a penalty payment. These projects are supposed to provide for environmental improvement and be projects that the facility is not otherwise legally required to perform. According to LDEQ, companies are not getting a "better deal" by agreeing to BEPs since the projects will cost more to implement than paying a penalty.

LDEQ has been settling with companies to perform these projects since 1988. In April 2000, LDEQ promulgated an emergency rule specifying the categories of projects that may be approved as BEPs. Before this rule, R.S. 30:2050.7 allowed LDEQ to enter into settlements that allowed the respondent to perform environmentally beneficial projects and/or provide for cash penalties. We obtained copies of 40 settlement agreements that LDEQ has approved since 1995 (see Appendix C for a summary of these agreements). LDEQ approved 23 of these agreements before the emergency rule (hereinafter referred to as negotiated settlements) and 17 of these after the rule (hereinafter referred to as BEPs). Appendix D contains the final BEP rule issued in August 2000. We found that in many cases it appears that these agreements do not effectively penalize facilities that violate environmental laws for the reasons summarized as follows:

The total settlement agreement was less than the original penalty.

We found that nine of the negotiated settlements and one of the BEPs cost less than the original penalty assessment. This contradicts LDEQ's statement that companies are not getting a "better deal" by agreeing to do an environmental project. For example, LDEQ issued one facility a penalty of over \$1 million. However, LDEQ then approved a project for the facility that included a \$400,000 cash penalty and a project valued at \$175,000 for a total settlement amount of \$575,000. Therefore, the settlement agreement totaled \$480,144 less (about 46% less) than the original penalty amount.

In addition to environmental benefits, some settlement agreements appear to also provide some economic or operational benefit to the violator.

We found that five negotiated settlements and five BEPs provided some economic benefit to the facilities in addition to providing environmental benefits. These economic benefits come from decreased disposal costs or upgrades/improvements to facilities. For example, one negotiated settlement involved a reduction in the amount of hazardous waste produced at the facility. However, while reduction of hazardous waste provides an environmental benefit, it also results in cost savings for the facility because the facility reduces disposal costs.

It does not appear that LDEQ considers the economic benefit to facilities when deciding whether or not to approve environmental projects. By not counting the annual cost savings to the facilities as a result of the project, the project expenditures are overstated and do not show the true cost to the company. Projects that are higher than the original penalty amount may be projects that were already planned by the facilities. This may provide significant economic benefit to the facility and be a way for the facility to avoid the original penalty altogether.

For example, LDEQ negotiated a settlement allowing Carboline to avoid paying a \$22,754 penalty. The project would reduce Carboline's waste by approximately 3,250 gallons per year of wash water, 17.5 tons of solid waste per year, and 12,560 pounds of hazardous waste per year for a total cost of \$107,000. Carboline had planned to dispose of these amounts at approved permitted facilities, but instead will not produce these wastes. By not producing these wastes, Carboline will save money on disposal costs annually. However, the settlement agreement did not state how much the facility was going to save as a result of the project.

In addition, project documentation does not state whether LDEQ calculates the project costs as a pre-tax or post-tax cost since LDEQ's BEP rule does not require this. However, EPA's policy does take this into consideration because of the possible tax savings to the company. LDEQ cannot know the actual costs of a

project to a facility if it does not take into consideration all of the possible cost savings or revenue generation of the project.

In addition, 38% of settlement agreements totaled at least twice the amount of the original penalty assessment. In fact, these settlement agreements are, on average, 799% higher than the original penalty assessments. Therefore, companies that improve their own facility may spend more on the project because they are receiving some type of economic or operational benefit.

Some projects included non-environmental projects or donations to non-environmental projects.

We found that three negotiated settlements and one BEP included projects or donations to non-environmental projects. The projects that we identified do not fall under any specific categories within the LDEQ BEP rule. This policy allows LDEQ to approve a variety of environmental projects, including projects categorized "Other." However, these projects do not fall under any of these categories because they do not appear to have environmental merit. For example, one BEP involved a \$100,000 donation to the Governor's Environmental Education Commission to conduct a state survey on the status of environmental education and to upgrade the Office of Environmental Education's web page.

Another negotiated settlement involved the construction of a water tank on property of MacKenzie Chemical in Mandeville to be used exclusively by local fire departments in St. Tammany Parish.

Some projects completed before the final settlement agreement was approved.

We found that three of the negotiated settlements and five of the BEPs we reviewed were completed before the final settlement agreement was approved. This means that LDEQ allowed the facility to use a project that they had already done as a penalty for the violations they committed. Therefore, these facilities had already planned to do this project and would have done it without a settlement agreement.

LDEQ did not consistently request a completion report.

In six of the negotiated settlements and six of the BEPs, LDEQ did not require that facilities submit a report that outlined completion dates and actual costs of the project. If LDEQ does not request a report documenting completion of the project and actual costs of the project, LDEQ has no formal process to verify that the project was completed as outlined in the settlement agreement. In addition to requesting a completion report, LDEQ should physically verify that the projects are completed. In one case, LDEQ approved an agreement in August 2000. In this case, a landfill agreed to clean various sites around the parish. LDEQ requested that the facility send documentation of all sites cleaned. LDEQ

received documentation from the facility that all sites were cleaned on January 4, 2001. However, an inspection on January 3, 2001, found that one site was not cleaned as required.

BEPs do not effectively deter facilities from subsequent noncompliance.

We found one case where one facility had been allowed to perform three projects from June 1997 to June 2001. Each time the facility committed similar violations involving unauthorized releases to air. In one agreement, the project was supposed to prevent such releases from occurring; however, the facility continued to have releases. The company avoided paying \$84,000 in penalties in favor of doing projects mainly aimed at upgrading its own facility. However, the facility has 136 unauthorized releases since the date of the last release cited in the settlement agreement (August 1998). Consequently, it appears that negotiated settlements and BEPs may not always effectively deter facilities from committing subsequent violations.

Some negotiated settlements benefited LDEQ.

We found that three of the negotiated settlements specified a project that benefited LDEQ. According to EPA's Supplemental Environmental Project (SEP) guidelines, projects should not expand an EPA program or should not be a project that EPA is already required to do. However, we found that some of these projects provided services that LDEQ would have had to pay for during its normal course of operation.

For example, BP Oil agreed to spend \$43,000 on purchasing monitoring equipment and computers for LDEQ's Air Quality Division that will be used to monitor ozone levels in the Baton Rouge and Lake Charles areas. Since Baton Rouge is a non-attainment area, LDEQ is already required to monitor ozone levels in this area. In another, a facility's BEP included a \$42,500 purchase of a facility-response command post for LDEQ.

State law requires all penalties that LDEQ receives to go into the Hazardous Waste Cleanup Fund. However, by receiving these items directly, LDEQ may be circumventing this law and the appropriation process.

Objective 3: LDEQ's Complaint Resolution Process

Does LDEQ's complaint process instill public confidence through timely and thorough resolution of complaints?
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While LDEQ's complaint process generally results in inspectors investigating complaints through site visits, the resolution of complaints is not always timely and the public's satisfaction with LDEQ's handling of complaints is low. In addition, some violations discovered through complaint investigations did not always receive enforcement actions even though the inspector recommended such.

We found that LDEQ did not address 120 of 354 (34%) complaints in our sample within five days. In addition, LDEQ did not appear to take enforcement action against seven of the 18 (33%) complaints in our sample that appeared to have violations. Furthermore, eight of the 10 complainants in our sample that we were able to contact were not satisfied with LDEQ's handling of their complaint. As a result, the public's dissatisfaction with LDEQ's attention to their concern may prevent them from calling in future complaints.

Recommendation 13: LDEQ should ensure that it resolves complaints timely.

Management's Response: The department partially agrees with this recommendation. LDEQ endeavors to address all complaints and releases as quickly as possible and preferably within 5 working days of receiving notification. LDEQ believes that responding to complaints within 5 days is being accomplished, but resolution of complaints can take much longer. Again, due to manpower constraints, it is necessary that we prioritize complaints balanced against inspections to ensure we are addressing those matters with the largest environmental impact.

Recommendation 14: LDEQ should properly address violations discovered during complaint investigations.

Management Response: The department partially agrees with this recommendation. It should be noted that areas of concern are discovered during complaint investigations and not violations. The Enforcement Division does evaluate the complaints based on the supporting evidence and addresses all areas of concern that are deemed to be violations.

Background

LDEQ's Single Point of Contact (SPOC) staff are responsible for receiving all complaints and all incidents, including unauthorized spills, releases and discharges. SPOC staff enter the complaints and incidents in a database and fax the incident form to the appropriate region. In emergency cases, SPOC staff will call the regions about the

incident. Regional inspectors then respond to complaints and incidents depending on whether the complaint is prioritized as emergency, high, or low.

Complaints

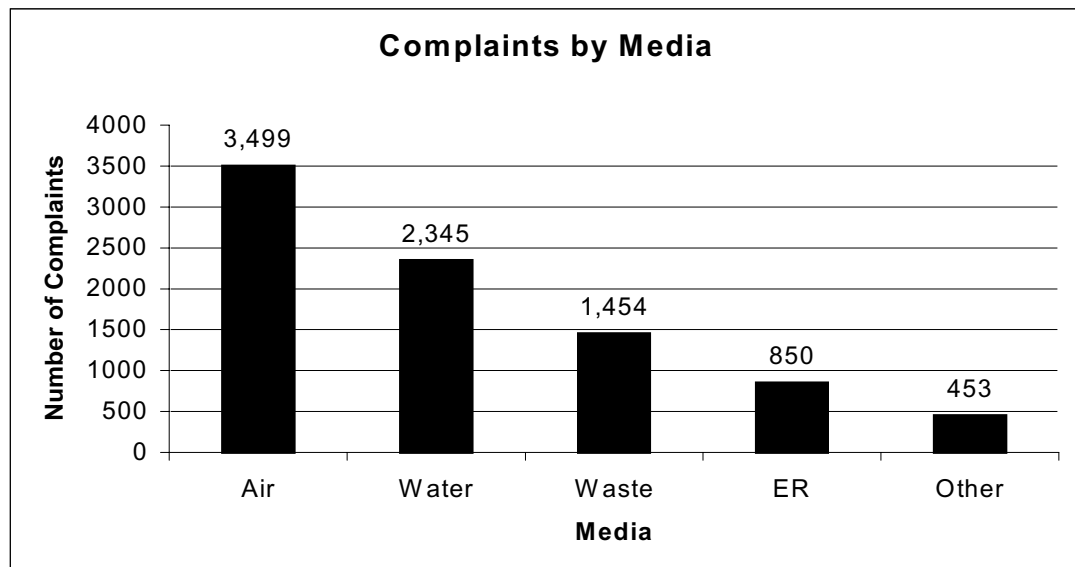
LDEQ received a total of 8,601 complaints during fiscal years 1999, 2000, and 2001. We categorized these complaints by media and determined the following:

- 41% were air complaints and the most common type of air complaint was odor complaints.
- 27% were water complaints and the most common type of water complaint was sewage complaints.
- 17% were waste complaints (solid and hazardous waste).
- 10% were Emergency Response complaints (ER).
- 5% were other types including radiation, underground storage tanks (UST), multi-media, and problems.

Exhibit 11 summarizes the complaints by media.

Exhibit 11

Complaints by Media For Fiscal Years 1999 to 2001



Source: Prepared by legislative auditor's staff using data from LDEQ's SPOC database.

Incidents

LDEQ received a total of 17,146 incident reports involving releases and discharges to air, water and soil in fiscal years 1999 through 2001. Twenty-nine entities statewide had 90 or more unauthorized releases and spills during this time frame.

Exhibit 12 shows the top 10 entities with reported spills and releases for fiscal years 1999 through 2001. In addition, Exhibit 13 shows the top 10 materials that were reportedly released or spilled, respectively.

Exhibit 12 Top 10 Companies With Reported Spills During Fiscal Years 1999-2001	
Company	Total Number of Incidents
Entergy	738
Exxon	610
LA Gas	473
Shell	383
Motiva	320
PCS Nitrogen	318
Texaco	304
American Freightways	300
Entex	298
City of Baton Rouge	218
Source: Prepared by legislative auditor's staff using LDEQ's data from SPOC. Note: The numbers include incidents occurring at all of the companies' locations.	

Exhibit 13 Top 10 Materials Reportedly Released or Spilled During Fiscal Years 1999-2001	
Material	Times Released
Natural Gas	2,801
Crude Oil	1,088
Diesel	989
Sewage	757
Sulfur Dioxide	698
Unknown	617
Ethylene	523
Nitrogen Oxides (and derivatives)	512
Oil	418
Ammonia	347
Source: Prepared by legislative auditor's staff using LDEQ's data from SPOC.	

One-Third of Complaints Not Addressed Timely

Thirty-four percent of the 354 complaints that we analyzed were addressed six days or more after the complaint was received. According to an objective in the fiscal year 2001 Executive Budget, LDEQ says it will address 95% of all complaints and incidents within five days of notification. However, only 66% of the ones in our sample were addressed within five days.

We originally obtained a list of 804 complaints that had been entered into TEMPO. However, some actions taken on the complaint did not count as "addressing" the complaint according to LDEQ Surveillance staff. In addition, some of the complaints

had negative response times (i.e., complaint investigated months before the complaint was received), and others had no dates at all. According to LDEQ, these problems were caused by the implementation of TEMPO and differing processes for entering data in the regions and headquarters. Therefore, we were only able to evaluate 354 complaints of the 804 entered in TEMPO.

Because LDEQ addressed only 66% of complaints within five days, the department was unsuccessful in meeting its objective. In addition, untimely resolution of complaints could result in evidence of the incident or violation no longer being present or concealed by the time the inspection is done. In addition, a delayed response may allow violations to continue for long periods of time.

87% of Complaints in Sample Investigated With Site Visits

We reviewed a sample of 60 complaints and determined the following:

- 52 (87%) complaints investigated through site visits [Six of these 52 used either a previous or a subsequent site visit as a resolution.]
- 2 (3%) complaints investigated through telephone calls. [Of these two, one appeared to be appropriately investigated through a telephone call; however, the other could have been more thoroughly investigated.]
- 6 (10%) complaints not investigated at all or LDEQ could not produce documentation showing that they were investigated

Based on our review and follow-up attempts to obtain missing information, we found that LDEQ did not investigate all of the complaints it received and/or did not have proper documentation for several complaints. It appeared that some of the instances where information was missing could have been a result of TEMPO implementation and some procedures had not yet been finalized. However, not maintaining either a physical copy or an electronic record of the complaint results in a lack of evidence that LDEQ addressed the complaint.

LDEQ prioritizes complaints as emergency, high, or low priority and available staff and resources are considered when prioritizing the complaints. LDEQ staff stated that not all complaints are investigated. LDEQ often uses judgment to determine the reliability of some complaints. However, several of the complaints in our sample that did not appear to be investigated seemed to be legitimate complaints. For example, one complainant reported eye irritation because of flaring at a nearby facility.

Some Complaints in Sample Appearing to Have Violations Were Not Issued Enforcement Actions

We found that 33% of the complaints in our sample appeared to have violations and were not issued enforcement actions. We reviewed a judgmental sample of 60 complaints and found that 54 of the 60 complaints were investigated. Of those 54 complaints investigated, 18 appeared to have violations. Of those 18 that appeared to have violations, we found the following:

- 5 (28%) issued enforcement actions
- 7 (39%) appeared to have violations, which were corrected during the inspection
- 6 (33%) appeared to have violations, but no enforcement action was issued (In two of these cases, the inspector recommended an enforcement action be issued.)

LDEQ staff have stated that it is often easier to have the facility correct the violation that resulted in the complaint rather than issue enforcement actions. According to LDEQ, this is often the case with less serious violations. However, 33% of the complaints in our sample that were investigated and appeared to have violations were not issued enforcement actions. As a result, these facilities may continue to commit such violations. In fact, we found that one facility may be continuing to commit the violation cited in the original complaint. In this case, an LDEQ inspector investigated a complaint and found an unpermitted discharge of excessive amounts of organic material. Although the inspector recommended an enforcement action, no action was taken. When we called the complainant who filed the complaint, he said that the violation cited in the original complaint was still a problem.

Most Complainants in Sample Contacted Are Dissatisfied With LDEQ's Handling of Complaints

We were only able to contact 10 complainants from our sample of 60 complaints to conduct a brief survey of their opinion of LDEQ's handling of complaints. We found the following:

- Eight of 10 said they were dissatisfied when asked to rate their overall opinion of LDEQ's investigation and resolution of complaints.
- Two of six complainants who requested to be contacted said they were not contacted by an LDEQ employee in response to their complaint.
- Eight of 10 complainants said they did not feel that LDEQ responded to complaints in a timely manner.

- Six of 10 of the complainants said they would contact LDEQ again to report a complaint. However, many stated that the only reason why they would call LDEQ again is because they do not know who else to call. One complainant even stated that if she could “go over LDEQ’s head” to report incidents she would, but she does not know who else to go to.

Almost all of the complainants we contacted were frustrated with LDEQ’s handling of complaints. Many also stated that the complaints are recurring problems that they have called LDEQ several times about, but they feel as though LDEQ ignores them. One complainant even stated that she feels like the more she calls LDEQ, the more LDEQ ignores her.

If complainants are dissatisfied with LDEQ’s handling of complaints, overall public confidence in LDEQ’s complaint process may be low. Although many of the complainants surveyed said they would call LDEQ again to report a complaint, they said they would only do so because they do not know who else to call. Because residents of Louisiana may be discouraged from calling LDEQ for subsequent complaints, violations that should be reported may not be.

Other Issues

During our audit, two other issues came to our attention that were outside the objectives of the audit. We performed limited audit work on the following two issues:

- **Many vital documents could not be located, were misfiled in physical files or were indexed incorrectly in electronic files.**
- **Nearly \$11 million in fees remains uncollected because of poor billing practices.**

Recommendation 15: LDEQ should closely monitor all records management functions to ensure that records are properly stored both physically and electronically and are easily accessible.

Management's Response: The department agrees with this recommendation. LDEQ is indeed committed to the continuous analysis and improvement of its records management program. While the design and implementation of a comprehensive records management program for LDEQ is a work in progress, many significant accomplishments have already been achieved. For example, as a result of the imaging projects, all LDEQ facility files that have been imaged are now accessible from a single system searchable in the Public Records Room and soon to be available via the Internet. To ensure consistency, the quality of each of these images is reviewed according to a seven-point checklist before it is accepted into this system.

Recommendation 16: LDEQ should establish a uniform billing and collection mechanism that ensures that companies are properly billed and that they make timely payments.

Management's Response: The department agrees with this recommendation. LDEQ is currently transitioning its invoicing databases into the TEMPO system. As a result, TEMPO will now be the department's consolidated billing and collection system. All information necessary for permit maintenance and activity billing will be contained in TEMPO. And, since effective start dates and end dates for permits will be contained in the system, LDEQ will now have the ability to invoice for all currently effective activities. Furthermore, late payment fees will be assessed automatically and invoices that remain unresolved will be automatically forwarded to the Violation list to be addressed with the appropriate remedial action.

Public Documents Are Not Easily Accessible at LDEQ

The problems we experienced trying to find required documentation for this audit are very similar to the problems expressed by the public when they request public documents from LDEQ. All of the documents we tried to locate are public documents and are the same types of documents the public requests, including permits, inspection reports, enforcement actions, and correspondence. In many instances, we were unable to determine if LDEQ either did not receive or create a document or if documents had simply been lost.

Documents Not Easily Found in Electronic System; Some Not Found At All

LDEQ began its conversion to an electronic record keeping system in 1998. LDEQ contracts with a private vendor, Affiliated Computer Services (ACS), to run its file rooms, scan in the files, and manage the public records room. We consistently had problems locating documents in the physical files and in the electronic imaging system. These problems made it very difficult to obtain complete and reliable data on certain facilities. LDEQ entered into a three-year approximately \$7.1 million contract with ACS on June 15, 1998, to provide services to scan in LDEQ files (including the planning, hardware and software) and operate LDEQ file rooms. A second three-year contract for \$6.7 million was entered into on June 15, 2001.

We found that 82% of the misfiled air documents were dated after ACS personnel took over the file room. ACS personnel attributed this condition to a high turnover of its file room staff and inadequate training from LDEQ staff during the transition. Because ACS employees scanned files into the electronic database exactly as they appeared in the file rooms, any documents that were misfiled in the physical files were incorrectly indexed in the electronic database. ACS employees also staff the LDEQ public records room and one of its duties is to reconcile incorrectly indexed documents.

Access to records is important for the public and for LDEQ employees. The public has a right to obtain accurate and complete information about their environment. In addition, LDEQ employees need access to accurate and complete information in order to effectively regulate facilities under its jurisdiction. The difficulties that we experienced during our audit increase the importance of maintaining the current physical files until LDEQ establishes that the complete physical files have been accurately scanned and indexed into the electronic imaging system. For example, ACS personnel had to resort to the physical files for more identifying information in order to find one of the solid waste enforcement actions we could not locate.

ALPS is the software used to search for and view electronic images of physical documents. As of December 2001, seven of the eight media file rooms had their documents scanned. Of those seven file rooms, five of them have been closed. Thus, for five media (groundwater, inactive and abandoned sites, underground storage tanks, hazardous waste, and solid waste) the only public access to documents is electronic.

We used ALPS to conduct our solid waste and hazardous waste file reviews because these file rooms have been closed. However, we faced many problems trying to use this system to conduct our file reviews. The following is a sampling of what we experienced.

Results of Comparison of Physical File to ALPS Records

We randomly selected a solid waste facility to conduct a physical file review. We had LDEQ bring all of that facility's files out of storage. We pulled 67 documents from fiscal years 1999 through 2001 to look for in ALPS. We were unable to find nine (13%) of the 67 physical documents in ALPS. Therefore, these documents may not have been scanned into the system or were scanned in improperly.

Solid Waste Enforcement Actions

We conducted a search on ALPS for 706 enforcement actions. We were unable to locate 22% (153) of the documents on our own. Public records room staff (ACS employees) searched for the 153 documents. The results follow:

- 102 documents found by public records room staff personnel
- 43 documents not found at the time of this report although ACS staff searched for over 4 weeks
- 8 documents not in ALPS or the physical files (probably lost in the file room)

ACS employees located 33 of the 102 documents using alternate methods, which the general public might not have access to or knowledge of. The other 69 documents were indexed improperly when they were scanned in and therefore required public records room staff's assistance in finding and reconciling the documents.

Hazardous Waste Inspections

We searched for hazardous waste facilities' inspections in ALPS. When documents are scanned in, they are assigned a document type. These document types include permit, inspection, form, note or memo, report, and incoming correspondence. These document types help narrow searches when using ALPS to locate certain documents. However, document types are not always assigned accurately. For example, when searching for the hazardous waste inspections, we had to search under the document types form, inspection, outgoing correspondence and report.

According to RCRAInfo, 117 inspections were conducted during our audit scope. However, we were only able to find 78 of the inspections in ALPS. Therefore, we were unable to find 33% of these inspection reports in ALPS. Of the inspections we did find, we found them under document types inspection, report, or outgoing correspondence.

LDEQ's Audit Services Section Had Similar Concerns About ALPS

LDEQ's Audit Services Section conducted an audit on the Hazardous Waste Annual TSD Invoices for FY 2000. The report was issued October 4, 2001. The auditors reported on the difficulties they experienced using ALPS for their audit. They found that records were very hard to find in ALPS and, therefore, this increases the importance of the manual files being maintained by permit writers. They recommended that ALPS be made faster and more user-friendly. We interviewed the LDEQ records manager on December 13, 2001 (more than 2 months after that audit was released). When we asked the manager about how LDEQ planned to address the findings, she stated that she was unaware this audit had been conducted or that it contained a finding about ALPS.

Misfiled Documents in File Rooms

Air Files

We experienced significant problems locating files and documents during our air file review. For example, 13% of the files we requested from the file room could not be found. We also could not find the following documents in the files that according to LDEQ should have been in the files:

- 13% of the self-monitoring reports
- 60% of the inspection reports
- 18% of the permits

In addition, we found a large number of misfiled documents in the 45 air files we reviewed. In the files for 10 facilities, we found at least 85 documents for other facilities and 12 documents misfiled within the correct facilities' folders. Approximately 82% of the misfiled documents were dated after ACS took over LDEQ's file rooms.

It was very common to find documents within one facility's file misfiled within those files. For example, we found inspection reports in a temporary variance file. In addition, we found a large number of documents that were filed in the wrong facility's files. This means that the inspection report requested could be anywhere in the file room. For example, we found a 1999 inspection report for Forman Petroleum Company in an E.I. Dupont folder that contained documents from the 1970s and 80s.

Our file review revealed that the inspection report could be anywhere in the facility's files. Looking through all of a facility's files can take anywhere from a few hours to several days. Most members of the public and LDEQ's staff cannot spend that much time looking for a document that has been misfiled.

Water Files

We also experienced problems with files that could not be found and misfiled documents during our water file review. For example, 5% of the files we requested from the file room could not be found.

In addition, in the 30 files we reviewed, we found 15 misfiled documents in 10 facilities' files. For example, we found three 1999 discharge monitoring reports for Tennessee Gas Pipeline in an Exxon file. As stated previously, this condition poses a problem for the public and LDEQ employees when requesting documents--there is no way to determine where these documents were filed.

Solid Waste Physical File Storage Is Inefficient

We originally planned to do a file review of 50 solid waste facility files. However, the time required to review the files made this unfeasible. Instead of storing a facility's complete set of files in one (or more if needed) box, LDEQ stores the permit separate from the other files for that facility. However, one box can contain many different facilities' files. Therefore, if you request the files for one facility, you will receive several files on facilities that were not requested.

LDEQ's Billing and Collection Procedures Are Inefficient and Do Not Ensure Accurate Billing and Collection of Fees

Nearly \$11 Million in Fees Are Past Due

As of December 2001, LDEQ has not collected approximately \$10.8 million in various fees. LDEQ's Accounts Receivable Division had never attempted to collect past due accounts before October 2000. In October 2000, this division made an effort to collect past due accounts by sending letters to companies who had unpaid fees of \$5,000 or more. The department found that many of these accounts were the result of over- or under-billings. In other cases, the companies had filed bankruptcy or were no longer in existence. As a result of these letters, LDEQ was able to collect 16% of uncollected fees. However, because LDEQ has not made previous attempts to collect past due accounts, LDEQ is not receiving all the revenue that it is due. In addition, uncollected accounts have increased over the years and the percentage uncollected has doubled since 1992.

In addition, LDEQ staff responsible for billing do not communicate past due accounts to permit writers unless permit writers inquire about a particular account. As a result, facilities may be obtaining permits without paying the required permit fees. LDEQ staff responsible for billing water annual fees and air quality fees do not routinely submit a list of unpaid fees to the Enforcement Division. These two billing sections were responsible for 46% of the total dollars billed in fiscal year 2001.

LDEQ Does Not Assess Any Late Fees

According to the Financial Services Division, LDEQ does not assess late fees on past due accounts because its billing system does not have the capability to assess late fees. State regulations for air, water and hazardous waste require a late payment fee if payment is not received within 15 days. However, according to staff in LDEQ's Financial Services Division, TEMPO is supposed to have the capability to assess late fees.

Billing Process Is Inefficient

We found that LDEQ has no centralized billing process. Each type of billing has different billing procedures and there is little supervisory review of this process. In fact, many employees develop their own billing procedures. For example, water permit fees are handled by one person and water annual maintenance fees are handled by someone else. In addition, LDEQ uses multiple databases for billing purposes. Five of the seven employees who issue invoices enter data in two databases with little to no reconciliation of the databases. Furthermore, LDEQ often relies on the billed facilities to determine if invoices are correct.

Hazardous Waste Invoices Often Incorrect

Louisiana Administrative Code 33:V.5117 requires that hazardous waste facilities that treat, store or dispose of hazardous waste pay an annual monitoring and maintenance fee. LDEQ uses operating status information from RCRAInfo to bill all facilities for this fee. However, an LDEQ Audit Services Section report released in October 2001 found that inaccuracies in the RCRAInfo data resulted in many inaccurate billings to these facilities.

According to this internal audit, LDEQ staff input data into this database incorrectly. Since the database is used to generate invoices, many facilities did not get billed when they should have. The internal audit analyzed 182 invoices since fiscal year 1997 and found that nearly 19% of the invoices were incorrect and needed adjustments. In these cases, it appears that LDEQ had to rely on the facilities to inform them of the incorrect amounts. Not only does inaccurate data result in incorrect invoices, but it means that LDEQ does not know the accurate status of the facilities that they regulate.

According to LDEQ staff, TEMPO should solve many of LDEQ's billing/collection problems. TEMPO will allow the assessment of late fees to past due accounts and will eliminate several databases it currently uses for permitting and billing. This implementation is scheduled for June 2002.

Appendix A

Audit Scope and Methodology

Appendix A: Audit Scope and Methodology

This performance audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. We followed the applicable generally accepted government auditing standards as promulgated by the Comptroller General of the United States.

Scope

The audit focused on the four main media that LDEQ regulates--water, air, hazardous waste, and solid waste during fiscal years 1999, 2000, and 2001. For each media, we focused on LDEQ's activities related to the following functions:

- Permitting
 - Monitoring and Surveillance (inspections)
 - Enforcement
 - Complaints and Incidents
-

Methodology

To gain an understanding of LDEQ and each media, we completed the following procedures:

- Researched federal and state laws and regulations relevant to each media, including the Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act.
- Interviewed LDEQ officials at headquarters and regional offices as well as residents and environmental groups
- Reviewed LDEQ policies and procedures on permitting, surveillance, enforcement, and complaints

To determine whether LDEQ is protecting the residents and environmental resources of the state through its monitoring functions, we completed the following:

Water

- Obtained a list of permitted facilities and permit issue dates from the Permit Compliance System and the Permit Tracking System to determine permit issuance and expiration dates and determined that the population was 255 majors and 1,585 individual minor permits
- Generated a random sample of 18 minor permits and performed a file review to determine if inspections revealed violations, if violations

received enforcement actions, if self-monitoring data were submitted, and if self-monitoring data showed violations

- Obtained a list of all inspections conducted since fiscal year 1998 from the Permit Tracking System, the Permit Compliance System, and TEMPO to determine if DEQ conducted all required inspections in fiscal year 2000 and fiscal year 2001

Air

- Obtained a list of permitted facilities from the Compliance Data System and determined that the population was 676 facilities that emit 99.5 tons per year or more of any one pollutant (major sources); 1,482 facilities that emit 24.5-99.4 tons per year of any one pollutant (minor sources); and 2,723 facilities that emit 24.4 tons per year or less of any one pollutant (small sources)
- Generated a random sample of 20 major source facilities, 20 minor source facilities, and 5 small source facilities and performed a file review to determine if self-monitoring reports were submitted and if they showed permit deviations, if inspections were conducted and revealed violations, and if violations received enforcement actions
- Obtained a list of all inspections conducted from January 1996 to November 2001 from the Compliance Data System to determine the frequency of inspections for facilities

Hazardous Waste

- Obtained a list of all hazardous waste treatment, storage and disposal facilities and permits issue dates from the EPA database RCRAInfo to determine how many permits have expired and determined that the population was 66 facilities
- Generated a random sample of 15 facilities to do a file review using LDEQ's electronic records system, ALPS; reviewed files to determine if inspections revealed violations and whether those violations received enforcement actions; and also determined whether required annual reports were submitted
- Obtained a list of all inspections from RCRAInfo for fiscal year 2000 and fiscal year 2001 for all treatment, storage and disposal facilities to determine if DEQ conducted all required inspections

Solid Waste

- Obtained a list of all solid waste facilities and their issue dates from the Permits Division to determine how many permits have expired and determined that the population of standard permits was 217 facilities
- Generated a random sample of 15 facilities to do a file review using ALPS; reviewed files to determine if inspections revealed violations and whether those violations received enforcement actions; and also

determined whether annual reports and groundwater monitoring reports were submitted

- Obtained a list of all inspections from Surveillance staff to determine if LDEQ conducted all the required inspections in fiscal year 2000 and fiscal year 2001
- Obtained lists of solid waste temporary permits from a variety of sources and tried to reconcile them and determined that the population of temporary permits was 293 since fiscal year 1993

To determine whether LDEQ is protecting the residents and environmental resources of the state through its enforcement functions, we completed the following:

Water

- Obtained a list of enforcement actions from LDEQ's Enforcement Tracker issued from fiscal year 1999 to fiscal year 2001; matched these enforcement actions with violations listed in the Permit Compliance System; reviewed 697 open enforcement actions and their corresponding 2,996 violations to determine whether LDEQ issued enforcement actions timely, whether LDEQ escalated the actions when similar violations occurred, and whether LDEQ took action on all violations; and also determined the amount of uncollected penalties

Air

- Obtained a list of enforcement actions from LDEQ's Enforcement Tracker issued from fiscal year 1999 to fiscal year 2001; matched these 774 enforcement actions to the enforcement actions and violations from the Compliance Data System; reviewed these enforcement actions to determine the amount of uncollected penalties; reviewed 121 facilities with multiple enforcement actions during fiscal year 1999 to fiscal year 2001 to determine whether LDEQ escalated the actions when similar violations occurred; and obtained a list of High Priority Violators for fiscal year 1999 and fiscal year 2000 to determine whether enforcement actions were issued timely

Hazardous Waste

- Obtained a list of enforcement actions from LDEQ's Enforcement Tracker issued from fiscal year 1999 to fiscal year 2001; matched these enforcement actions with violations listed in RCRAInfo; and reviewed 60 enforcement actions and 128 violations to determine whether LDEQ issued enforcement actions timely, whether LDEQ escalated the actions when similar violations occurred, and whether LDEQ collected all penalties

Solid Waste

- Obtained a list of enforcement actions from LDEQ's Enforcement Tracker issued from fiscal year 1999 to fiscal year 2001; matched these enforcement actions with violations listed in the actual enforcement actions scanned into ALPS; and reviewed 553 enforcement actions for 799 violations to determine whether LDEQ issued enforcement actions timely, whether LDEQ escalated the actions when similar violations occurred, and whether LDEQ collected all penalties

Negotiated Settlements and Beneficial Environmental Projects (BEPs)

- Obtained a list of 40 approved BEP settlement agreements since 1995 from the LDEQ Enforcement Division and summarized the BEP settlement agreements to answer the following questions:
 - What was the nature of the violation that resulted in the BEP?
 - What was the original penalty date and amount?
 - What was the final settlement (BEP + penalty payment), and the time between the original penalty amount and final BEP approval?
 - Does the BEP appear to benefit the facility in some way? Are these benefits quantified in the settlement agreement?
 - Did the facility submit actual costs spent on the BEP? Did LDEQ ensure that the facility satisfactorily completed the BEP?
 - Did LDEQ request a completion report? Was the report received?
 - Did the facility complete or plan the BEP before the final approval date?
 - Would the BEP be considered "acceptable" under EPA SEP Policy?

To determine whether LDEQ's process for responding to complaints results in timely and thorough resolution, we completed the following:

- Obtained a list of 8,749 complaints received by LDEQ for fiscal year 1999 to fiscal year 2001 from LDEQ Emergency Response Single Point of Contact staff; reviewed 8,601 complaints that were received and handled by LDEQ; categorized the complaints by media and then by type within each media; and analyzed the complaints to determine how many complaints were received for each media and the most common type of complaint within each media
- Obtained a list of 804 total complaints and incidents in LDEQ TEMPO database; analyzed 354 complaints only since these were the only ones with dates; and compared the results to the objective in fiscal year 2001 Executive Budget that states that LDEQ will address 95% of incidents and complaints within 5 days of receipt of notification of the complaint

- Judgmentally selected a sample of 60 complaints out of the 8,601 received and handled by LDEQ for fiscal years 1999 through 2001; obtained all documentation relating to the 60 complaints and analyzed the sample to determine if the complaints were investigated, the method of investigation, how many appeared to have violations, how many received enforcement actions, and how many were recommended to receive enforcement actions; and contacted investigators of complaints to follow up on missing information
- Attempted to contact all complainants in sample; were only able to contact 10 complainants; and conducted and summarized a brief survey of the complainants' satisfaction with LDEQ's response and resolution of resident complaints

Other Issues

Public Access

- During the various file reviews, documented cases involving lost files, missing and misfiled documents
- Documented all cases using ALPS where we could not locate certain documents
- Interviewed Public Records staff and ACS staff to understand file room processes and procedures for scanning documents into ALPS
- Selected one solid waste file in storage and compared all documents in the file to all documents in ALPS

Fees

- Interviewed all employees responsible for billing and creating invoices and surveyed these employees to document their billing processes
- Interviewed Fiscal Services Division to obtain information on past due accounts and procedures for collecting those accounts and assessing late fees
- Tested controls over the billing processes

Appendix B

Penalties LDEQ Assessed
and Collected From
Fiscal Years 1999 to 2001

Appendix B: Penalties LDEQ Assessed and Collected From Fiscal Years 1999 to 2001

ORDER #	NAME	DATE	PENALTY AMOUNT	AMOUNT PAID	AMOUNT UNCOLLECTED	REASON NOT PAID
AIR						
AEP990039	ACADIAN SHIPYARDS INC	25-Jan-99	\$5,000.00		\$5,000.00	appeal process
AEP990071	ALLIEDSIGNAL INC	9-Mar-99	\$3,000.00	\$3,000.00		
AEP990006	AMERICAN INTL REFINERY LAKE CHARLES FAC*	6-Jan-99	\$12,400.00	\$12,400.00		
AEP990297	AMERICAN IRON REDUCTION, LLC	30-Nov-00	\$22,750.00		\$22,750.00	bankruptcy
AEP000079	ARCH CHEMICALS*	29-Jan-01	\$18,401.00		\$18,401.00	appeal process
AEP980269	ASBESTOS TECH INC**	16-Dec-98	\$17,500.00	\$5,000.00	\$12,500.00	
AEP980182	B P OIL CO.	4-Sep-98	\$28,000.00	\$28,000.00		
AEP980257	BAHAR DEVELOPMENT INC	11-Dec-98	\$120,000.00		\$120,000.00	appeal process
AEP990148	BASF WYANDOTTE	18-Jun-99	\$3,300.00	\$3,300.00		
AEP990166	BEAIRD INDUSTRIES INC	19-Aug-99	\$3,500.00	\$3,500.00		
AEP990276	BEAIRD INDUSTRIES, INC.	6-Jun-00	\$15,787.50	\$15,787.50		
AEP000211	BIOLAB, INC.	30-Jan-01	\$1,210.00	\$1,210.00		
AEP990097	BOES ROGER T & BOES CORP INC	2-Jun-99	\$135,000.00		\$135,000.00	executory
AEP990272	BOES, ROGER T.	29-Aug-00	\$351,750.00		\$351,750.00	appeal process
AEP980160	CABOT CORP	19-Aug-98	\$5,000.00	\$5,000.00		
AEP990168	CHALMETTE REFINING LLC	19-Aug-99	\$2,340.00	\$2,340.00		
AEP990013	CHARLIE CARLISLE, INC. UNAUTHORIZED DUMP	12-Jan-99	\$4,000.00	\$4,000.00		
AEP980201	CHEVRON CHEMICAL CORP.**	9-Oct-98	\$10,000.00	\$8,600.00	\$1,400.00	
AEP980253	CIRCLE K CORP	3-Dec-98	\$5,000.00	\$5,000.00		
AEP990167	CITGO PETROLEUM CORP	19-Aug-99	\$1,257.50	\$1,257.50		
AEP980159	CLEMENT IND INC	19-Aug-98	\$5,000.00	\$5,000.00		
AEP000068	CLEMENT INDUSTRIES, INC.	3-May-01	\$5,237.50	\$5,237.50		
AEP990295	CONAGRA POULTRY	29-Jan-01	\$7,362.50		\$7,362.50	appeal process
AEP990098	CONDEA VISTA CO**	14-Apr-99	\$45,000.00	\$15,000.00	\$30,000.00	
AEP000043	CONDEA VISTA CO.	19-May-00	\$16,210.00		\$16,210.00	appeal process
AEP980168	CONDEA VISTA COMPANY**	24-Aug-98	\$6,000.00	\$12,000.00	(\$6,000.00)	
AEP990036	CONDEA VISTA COMPANY	25-Jan-99	\$15,000.00	\$15,000.00		
AEP980240	CONOCO INC**	16-Nov-98	\$300,000.00	\$75,000.00	\$225,000.00	
AEP000092	CONOCO, INC.	28-Aug-00	\$39,550.00	\$39,550.00		
AEP000070	CONOCO, INC.	16-May-01	\$90,614.00		\$90,614.00	appeal process
AEP990274	CONTINENTAL BARONNE, INC.	7-Jul-00	\$178,210.00		\$178,210.00	appeal process

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

ORDER #	NAME	DATE	PENALTY AMOUNT	AMOUNT PAID	AMOUNT UNCOLLECTED	REASON NOT PAID
AEP990240	DELPHI AUTOMOTIVE SYSTEMS	29-Oct-99	\$12,400.00	\$12,400.00		
AEP980267	DELPHI INTERIOR AND LIGHTING SYS	16-Dec-98	\$100,000.00		\$100,000.00	rescinded
AEP980132	DELTA COMMODITIES**	17-Jul-98	\$4,000.00	\$3,000.00	\$1,000.00	
AEP980133	DELTA COMMODITY INC PLT II**	17-Jul-98	\$7,500.00	\$5,626.00	\$1,874.00	
AEP990038	DELTECH CORP	25-Jan-99	\$5,000.00	\$5,000.00		
AEP000168	DIAMOND B CONSTRUCTION	2-Nov-00	\$840.00	\$840.00		
AEP980181	DIAMOND B/SN #97-009	4-Sep-98	\$3,000.00	\$3,000.00		
AEP980158	DOW CHEM USA LOUISIANA DIV	19-Aug-98	\$5,000.00	\$5,000.00		
AEP990015	DUKE KICKAPOO CS	12-Jan-99	\$3,000.00	\$3,000.00		
AEP980212	DYNEGY MIDSTREAM SERVICES INC	31-Oct-98	\$5,000.00	\$5,000.00		
AEP990225	ENERGEN RESOURCES MAQ INC	15-Oct-99	\$780.00	\$780.00		
AEP990236	ENERGEN RESOURCES MAQ INC	29-Oct-99	\$840.00	\$840.00		
AEP980270	ENGLAND AUTHORITY THE**	16-Dec-98	\$15,000.00	\$11,250.00	\$3,750.00	
AEP990271	ENVIROGUARD, INC.	28-Aug-00	\$16,981.10		\$16,981.10	appeal process
AEP000301	EQUISTAR CHEMICALS, LP	12-Dec-00	\$2,387.00	\$2,387.00		
AEP990232	EQUISTAR CHEMICALS, LP (See: AEP990232A)	15-Oct-99	\$1,470.00	\$1,470.00		
AEP990074	EQUITABLE SHIPYARDS LLC**	11-Mar-99	\$7,500.00	\$6,200.00	\$1,300.00	
AEP990227	EXPRESS FODD MART, INC.	21-Feb-01	\$9,820.00		\$9,820.00	appeal process
AEP980122	EXXON CO USA BATON ROUGE REFINERY	6-Jul-98	\$10,000.00	\$10,000.00		
AEP990296	EXXON MOBILE CORP. - BR REFINERY	2-May-00	\$1,700.00	\$1,700.00		
AEPP000408	EXXONMOBILE REFINING & SUPPLY	25-May-01	\$59,844.80		\$59,844.80	appeal process
AEP990045	FIRESTONE SYNTHETIC RUBBER & LATEX CO	29-Jan-99	\$5,000.00	\$5,000.00		
AEP990255	FORMOSA PLASTICS	30-Nov-00	\$6,600.00	\$6,600.00		
AEP990169	FORMOSA PLASTICS CORP LA	19-Aug-99	\$1,700.00	\$1,700.00		
AEP990238	FORMOSA PLASTICS CORP., LA	29-Oct-99	\$8,700.00	\$8,700.00		
AEP980223	GEORGIA-PACIFIC	6-Nov-98	\$425,000.00	\$425,000.00		
AEP990049	GRAND ISLE SHIPYARD INC	4-Feb-99	\$3,000.00	\$3,000.00		
AEP990065	GRETNA MACHINE & IRON WORKS	26-Feb-99	\$7,500.00	\$7,500.00		
AEP000308	GULF ISLAND FABRICATION, INC.	12-Feb-01	\$8,825.00	\$8,825.00		
AEP990073	HALTER MARINE INC**	9-Mar-99	\$15,000.00	\$12,000.00	\$3,000.00	
AEP980139	HUNT PLYWOOD CO**	24-Jul-98	\$3,000.00	\$2,250.00	\$750.00	
AEP980268	IC OMNIMODAL TERM CO	16-Dec-98	\$6,000.00	\$6,000.00		
AEP990273	INDEPENDENT AMERICAN CONSTRUCTION OF LA, INC.	31-Aug-00	\$82,022.50		\$82,022.50	appeal process
AEP990044	J W OPER TURNER LOCATION	29-Jan-99	\$2,000.00	\$2,000.00		
AEP990037	J W OPRG RICHLLEN LOC	25-Jan-99	\$1,500.00	\$1,500.00		
AEP980213	KOCH NITROGEN CO	31-Oct-98	\$8,000.00	\$8,000.00		

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

ORDER #	NAME	DATE	PENALTY AMOUNT	AMOUNT PAID	AMOUNT UNCOLLECTED	REASON NOT PAID
AEP980258	LADHH	11-Dec-98	\$5,000.00		\$5,000.00	appeal process
AEP990105	LAROCHE INDUSTRIES INC	16-Apr-99	\$3,000.00	\$3,000.00		
AEP990099	MELAMINE CHEM INC	14-Apr-99	\$2,500.00		\$2,500.00	appeal process
AEP990282	MERIDIAN RESOURCE & EXPLORATION*	23-Feb-01	\$18,025.42		\$18,025.42	appeal process
AEP000330	MONSANTO CO.	30-Jan-01	\$1,700.00	\$1,700.00		
AEP000403	NATURAL GAS PIPELINE COMPANY OF AMERICA	12-Jun-01	\$51,068.48		\$51,068.48	appeal process
AEP980254	OLIN CHEMICALS	4-Dec-98	\$20,000.00		\$20,000.00	appeal process
AEP980125	ONEAL SALVAGE	6-Jul-98	\$5,000.00		\$5,000.00	in bankruptcy
AEP990253	ORION REFINING	2-May-00	\$5,050.00	\$5,050.00		
AEP000198	PCS NITROGEN FERTILIZER, LP	30-Jan-01	\$1,300.00	\$1,300.00		
AEP990072	PENNZOIL QUAKER STATE CO FKA PENNZOIL PRODUCTS CO**	9-Mar-99	\$50,000.00	\$12,500.00	\$37,500.00	
AEP990151	PPG INDUSTRIES INC	29-Jun-99	\$4,200.00	\$4,200.00		
AEP000174	PPG INDUSTRIES, INC.	31-Oct-00	\$6,600.00	\$6,600.00		
AEP990059	PRODUCTION MGMT INDUSTRIES INC	23-Feb-99	\$5,000.00	\$5,000.00		
AEP990281	PRO-TECH ENVIRONMENTAL SERVICES, INC.	28-Aug-00	\$1,710.00		\$1,710.00	appeal process
AEP990106	RAINBOW MARKETERS INC**	19-Apr-99	\$4,000.00	\$3,000.00	\$1,000.00	
AEP980226	REYNCOR IND ALCOHOL**	13-Nov-98	\$50,000.00	\$12,500.00	\$37,500.00	
AEP990254	RITE AID PHARMACIES	29-Feb-00	\$6,860.00	\$6,860.00		
AEP990012	S&A PLUS INC	12-Jan-99	\$1,500.00		\$1,500.00	executory
AEP000209	SABINE PIPE LINE CO.	26-Oct-00	\$1,310.00	\$1,310.00		
AEP000021	SHAW ALLOY PIPING PRODUCTS, INC.	1-May-01	\$1,050.00	\$1,050.00		
AEP980222	SHELL CHEMICAL CO GEISMAR WORKS	5-Nov-98	\$8,000.00	\$8,000.00		
AEP980169	SHELL CHEMICAL CO.-GEISMAR WORKS	24-Aug-98	\$5,000.00	\$5,000.00		
AEP980247	SHELL CHEMICAL CO.-GEISMAR WORKS	24-Nov-98	\$330,000.00		\$330,000.00	appeal process
AEP990014	SHELL CHEMICAL COMPANY-NORCO	12-Jan-99	\$7,000.00	\$7,000.00		
AEP990228	SHELL CHEMICAL CO-NORCO	5-Oct-99	\$66,095.50	\$66,095.50		
AEP980180	SOUTHERN QUIKRETE PRODUCTS INC	4-Sep-98	\$8,000.00		\$8,000.00	appeal process
AEP980153	TEXACO DBA STAR ENTERPRISE	7-Aug-98	\$3,000.00	\$3,000.00		
AEP990092	UNION CARBIDE COR TAFT STAR	9-Apr-99	\$5,000.00	\$5,000.00		
AEP000015	UNION CARBIDE CORP.	8-Nov-00	\$1,500.00	\$1,500.00		
AEP990048	VERNON PAR SCH BD	4-Feb-99	\$5,000.00		\$5,000.00	appeal process
AEP980127	VULCAN CHEMICALS	10-Jul-98	\$6,500.00	\$6,500.00		
AEP980266	W R GRACE CO INC	16-Dec-98	\$8,000.00	\$8,000.00		
AEP000081	WESTLAKE POLYMERS	19-Sep-00	\$26,060.00	\$26,060.00		
AEP980129	WRT ENERGY CORP	15-Jul-98	\$5,000.00		\$5,000.00	appeal process
Air Total			\$3,058,319.80	\$1,040,976.00	\$2,017,343.80	

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

ORDER #	NAME	DATE	PENALTY AMOUNT	AMOUNT PAID	AMOUNT UNCOLLECTED	REASON NOT PAID
WATER						
WEP000210	AMERICAN IRON REDUCTION, LLC	31-May-01	\$142,490.00		\$142,490.00	Proof of claim filed in court
WEP990045	B&J CARWASH	10-Aug-99	\$4,144.00	\$4,144.00		
WEP980500	BREDERO PRICE CO.	18-Dec-98	\$11,727.00	\$11,727.00		
WEP980504	CARL KYZAR DAIRY	14-Dec-98	\$12,365.00		\$12,365.00	appeal process
WEP000188	CROWLEY, CITY OF**	17-Oct-00	\$47,124.00		\$47,124.00	
WEP980502	DARREL S. JONES DAIRY - DARREL S. JONES	14-Dec-98	\$12,427.00		\$12,427.00	executory
WEP000322	DOLET HILLS MINING VENTURE, (THE)	22-Dec-00	\$168,512.37	\$168,512.37		
WEP970390	DUPONT DOW ELASTOMERS, LLC	4-Dec-00	\$15,000.00	\$2,000.00	\$13,000.00	
WEP980243	ENGINEERED PRODUCTS, INC.	31-Aug-98	\$7,719.00	\$7,719.00		
WEP980413	INTERNATIONAL PAPER CO.**	21-Oct-98	\$36,994.00	\$27,745.00	\$9,249.00	
WEP980276	INTERNATIONAL PETROLEUM & EXPLORATION OPERATING CORP.	26-Aug-98	\$12,017.00	\$12,017.00		
WEP980244	IRON SPRINGS OPERATING CO.**	17-Jul-98	\$10,018.00	\$4,800.00	\$5,218.00	
WEP970418	JUNE ENERGY, INC.	19-Aug-98	\$79,806.00		\$79,806.00	appeal process
WEP970419	JUNE ENERGY, INC.	19-Aug-98	\$100,629.00		\$100,629.00	appeal process
WEP980357	KAISER ALUMINUM & CHEMICAL CORP	29-Jan-99	\$20,670.00	\$20,670.00		
WEP980503	R.J. NEEDHAM DAIRY - R.J. NEEDHAM	14-Dec-98	\$12,365.00		\$12,365.00	rescinded
WEP990038	RELIABLE LDFL WESTERN WASTE IND	16-Apr-99	\$24,723.00	\$24,723.00		
WEP980466	REYNOLDS METAL CO**	21-Jan-99	\$42,373.00	\$35,000.00	\$7,373.00	
WEP970421	ROGER A. WILSON, INC.**	17-Jul-98	\$38,058.00	\$4,800.00	\$33,258.00	
WEP980501	SHAWN FITZGERALD DAIRY	14-Dec-98	\$12,427.00		\$12,427.00	rescinded
WEP990039	WESTLAKE PETROCHEMICALS CORP	19-Apr-99	\$22,854.00	\$22,854.00		
Water Total			\$834,442.37	\$346,711.37	\$487,731.00	
HAZARDOUS WASTE						
HEP990475	BAYOU TESTERS, INC.	30-Nov-00	\$12,595.00		\$12,595.00	executory
HEP970485	BENTON CREOSOTING WORKS	24-Aug-98	\$28,299.00		\$28,299.00	appeal process
HEP980182	BENTON CREOSOTING WORKS	10-Nov-98	\$2,466.00		\$2,466.00	appeal process
HEP000492	CARDINAL SERVICES, INC.	20-Feb-01	\$5,384.06	\$5,384.06		
HEP980408	CHEM WASTE MANAGEMENT INC	29-Jun-99	\$10,000.00	\$10,000.00		
HEP000545	CORE LABORATORIES, INC.	29-Jan-01	\$2,208.00	\$2,208.00		
HEP970427	CORE PETROPHYSICS INC.	10-Sep-98	\$5,778.00	\$5,778.00		
HEP990188	CYPRESS OIL & CYPRESS OIL, INC. - SAM HUSSEIN	2-May-00	\$75,805.00		\$75,805.00	executory
HEP980390	CYPRESS OIL CO INC	7-Apr-99	\$1,500.00		\$1,500.00	appeal process

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

ORDER #	NAME	DATE	PENALTY AMOUNT	AMOUNT PAID	AMOUNT UNCOLLECTED	REASON NOT PAID
HEP980384	FORMOSA PLASTICS CORP LA	7-Jan-99	\$1,920.00	\$1,920.00		
HEP990173	FORMOSA PLASTICS CORP LA	22-Dec-99	\$13,150.00	\$13,150.00		
HEP990716	FRIEDE GOLDMEN HALTER, INC.	16-Oct-00	\$9,116.00	\$9,116.00		
HEP980154	GEORGIA GULF	20-Nov-98	\$7,775.08	\$7,775.08		
HEP990123	GULF SOUTH SYSTEMS LLC - TRANSFER FAC	30-Dec-99	\$9,425.00	\$9,425.00		
HEP000620	HUB CITY FORD, INC.	11-Mar-01	\$2,740.00	\$2,740.00		
HEP000575	INDUSTRIAL PIPE & PLASTICS OF LA, INC.	2-Apr-01	\$22,573.00		\$22,573.00	Settlement finalized - will pay
HEP000500	INTERNATIONAL ENVIRONMENTAL SERVICES - INTERNATIONAL PETROLEUM CORP. OF LA	1-May-01	\$25,254.00		\$25,254.00	appeal process
HEP970422	LAFAYETTE AUTO SALVAGE	10-Mar-99	\$5,504.00		\$5,504.00	executory
HEP980314	LUCENT TECHNOLOGIES, INC.	20-Nov-98	\$3,519.00	\$3,519.00		
HEP000703	MANSFIELD INDUSTRIAL COATINGS, INC.	4-Jun-01	\$9,708.72	\$9,708.72		
HEP970543	MATLACK INC	1-Oct-98	\$6,639.00		\$6,639.00	Appeal process
HEP980094	PAUL'S PAINT & SANDBLASTING	26-Oct-98	\$29,174.86		\$29,174.86	executory
HEP970367	PAUL'S PAINT AND BODY SHOP	20-Oct-98	\$6,781.97		\$6,781.97	executory
HEP970382	PMI SANDBLASTING & PAINTING**	4-Aug-98	\$20,105.00	\$20,105.00		
HEP990617	POWER CLEANING SYSTEMS OF BATON ROUGE, INC.	12-Dec-00	\$126,905.00		\$126,905.00	executory
HEP000480	QUALITY SHIPYARDS, INC.	11-Apr-01	\$1,358.00	\$1,358.00		
HEP980352	SCENIC PERFECTION BUMPER & CHROME CO	7-Apr-99	\$4,818.00	\$4,818.00		
HEP010093	SET ENVIRONMENTAL, INC.	25-Jun-01	\$11,109.00		\$11,109.00	appeal process
HEP980381	SUPERIOR INDUSTRIAL MAINTENANCE CO INC	19-Apr-99	\$2,123.00		\$2,123.00	executory
HEP970547	U.S. REFINING, INC. (FORMERLY FALCON)	7-Dec-98	\$31,844.00		\$31,844.00	bankruptcy
Hazardous Total			\$495,577.69	\$107,004.86	\$388,572.83	
SOLID WASTE						
SEP000202	AARON ROBIQUE	22-Jan-01	\$5,819.21		\$5,819.21	appeal process
SEP000061	ARMAND'S HOME & AUTO CENTER/C.J. ARMAND	3-May-01	\$2,321.26		\$2,321.26	appeal process
SEP000217	AUTOMOTIVE TIRES & SERVICES, INC. - GOODYEAR AUTO TIRES & SERVICES	12-Jun-01	\$1,614.66	\$1,614.66		
SEP990195	CENTRAL PLUMBING OF VERNON PARISH, INC.	28-Nov-00	\$4,072.00		\$4,072.00	appeal process
SEP980199	DALTON LEBLANC C/D DUMP	29-Sep-98	\$530,187.00		\$530,187.00	executory
SEP980209	DAUVILL INC	1-Sep-98	\$39,281.60		\$39,281.60	executory
SEP980083	DESOTO PAR POLICE JURY**	14-Jul-98	\$12,000.00		\$12,000.00	BEP no penalty
SEP000193	FORET, LEROY	16-Mar-01	\$22,269.12		\$22,269.12	executory

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

ORDER #	NAME	DATE	PENALTY AMOUNT	AMOUNT PAID	AMOUNT UNCOLLECTED	REASON NOT PAID
SEP990198	JOHNNY F. SMITH TRUCK & DRAGLINE SERVICE, INC.	19-Sep-00	\$14,749.00		\$14,749.00	executory
SEP980282	KATE OWENS UNAUTHORIZED DUMP	10-Nov-98	\$14,636.00		\$14,636.00	executory
SEP990300	LASALLE PARISH POLICE JURY	30-Nov-00	\$12,325.36	\$12,325.36		
SEP000112	LATINO TIRE & REPAIR, INC.	30-Jan-01	\$4,022.52		\$4,022.52	referred to legal
SEP980305	METRO SALVAGE INC	17-Dec-98	\$872,080.40		\$872,080.40	rescinded
SEP990069	RELIABLE PROD SVC INC	16-Apr-99	\$14,817.00	\$14,817.00		
SEP990193	ROTTMANN, WAYNE	22-Nov-99	\$6,170.00		\$6,170.00	executory
SEP000077	SINGLETON BROTHERS USED TIRES - MOSES SINGLETON	3-May-01	\$1,119.66		\$1,119.66	executory
SEP990287	SWISCO ROAD DISPOSAL, INC.	31-Oct-00	\$24,241.26		\$24,241.26	executory
SEP980343	TENSAS PARISH POLICE JURY**	5-Feb-99	\$11,728.00		\$11,728.00	BEP no penalty
Solid Waste Total			\$1,593,454.05	\$28,757.02	\$1,564,697.03	
TOTAL FOR ALL MEDIA			\$5,981,793.91	\$1,523,449.25	\$4,458,344.66	

* Facilities in bold represent cases where LDEQ amended the original penalty. LDEQ amended these three penalties to lesser amounts due to LDEQ errors. These facilities originally had a total of \$1,729,781 in penalties. However, LDEQ amended the amount to a total of \$48,826. Therefore, the companies paid approximately \$1.6 million less.

** Paid through a settlement agreement.

Appendix C

Negotiated Settlements and
Beneficial Environmental Projects
Approved by LDEQ Since 1995

Appendix C: Negotiated Settlements and Beneficial Environmental Projects Approved by LDEQ Since 1995

RESPONDENT	PENALTY AMOUNT	PENALTY PAID	VALUE AMT BEP/SEP	Total Settlement	DATE OF FINAL LDEQ APPROVAL	COMMENTS
AIR						
Settlements before BEP rules promulgated						
BP OIL	\$148,750.00	\$15,000.00	\$43,100.00	\$58,100.00	03/06/95	Purchase monitoring equipment & computers to monitor ozone levels in Baton Rouge.
MURPHY OIL	\$60,000.00	\$10,000.00	\$155,000.00	\$165,000.00	10/13/95	Constructed source reduction pollution minimization project.
ENRON LA ENERGY CO.	\$90,000.00	\$20,000.00	\$112,000.00	\$132,000.00	10/13/95	Installed 3 catalytic converter packages on ethane compressors ENRON Riverside plant.
WESTLAKE POLYMERS	\$200,000.00	\$59,000.00	\$635,000.00	\$694,000.00	04/21/95	Installed emission control equipment that reduced Volatile Organic Compound emissions.
CONDEA VISTA CO.	\$40,000.00	\$10,000.00	\$550,000.00	\$560,000.00	06/17/97	Route 3" pipe from the S-316 knock-out pot to the Wet-Vent Header routed to the incinerator such that reaction gases (currently partially scrubbed with water & discharged to the atmosphere) will be contained and purged to the incinerator for the Vinyl Chloride Monomer Unit.
BIG RIVER INDUSTRIES	\$25,000.00	\$10,000.00	\$65,277.00	\$75,277.00	01/14/99	Enhanced dust suppression system to reduce fugitive particulate emissions.
GAYLORD CONTAINER	\$15,000.00	\$5,000.00	\$60,000.00	\$65,000.00	08/26/99	Upgrade # 10-C & #12 boilers ash de-watering system resulting in lower discharge of BOD and suspended solids.
PENNZOIL QUAKER STATE	\$50,000.00	\$12,500.00	\$42,095.00	\$54,595.00	02/15/00	Enhance training facilities at City of Shreveport Fire Academy and provide local office of Emergency Preparedness with updated computers & software for emergency planning purposes.

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

RESPONDENT	PENALTY AMOUNT	PENALTY PAID	VALUE AMT BEP/SEP	Total Settlement	DATE OF FINAL LDEQ APPROVAL	COMMENTS
BEPs approved by DEQ after BEP rules promulgated						
CONDEA VISTA CO.	\$36,000.00	\$12,000.00	\$1,660,000.00	\$1,672,000.00	05/02/00	Debottleneck HCl handling system and provide scrubber for reducing HCl emissions from upset conditions. Also reduce VCM emissions from upset conditions by routing to the incinerator.
GEORGIA PACIFIC CORP.	None	None	\$40,000,000.00	\$40,000,000.00	06/12/00	Low odor boiler conversion projects to reduce Total Reduced Sulfur and Volatile Organic Compound emissions beyond regulatory requirements.
FORMOSA PLASTICS, CORP.	\$10,000.00	\$3,500.00	\$250,000.00	\$253,500.00	03/29/01	Respondent agreed to upgrade Ambient Air Monitor (replacement of current gas chromatograph with a mass spectrometer).
CONOCO INCORPORATED (WESTLAKE FACILITY)	\$300,000.00	\$75,000.00	\$900,000.00	\$975,000.00	06/20/01	Respondent agreed to perform a project called the Dock Pipe Relocation Project.
CONDEA VISTA COMPANY	\$45,000.00	\$15,000.00	\$1,200,000.00	\$1,215,000.00	06/20/01	Respondent agreed to perform Lab Closed Aromatic Sewer Project.
MOTIVA ENTERPRISES, LLC. (State case)	None	\$500,000.00	\$4,030,000.00	\$4,530,000.00	07/02/01	Respondent agreed to donate money to the Lower Mississippi River Interagency Cancer Study; perform the Community Ambient Air Monitoring Project over 3 years; and perform flaring reduction over 3 years.
CHEVRON PHILLIPS CHEMICAL, LP		\$150,000.00	\$600,000.00	\$750,000.00	08/15/01	Respondent agreed to perform a model Leak Detection and Repair (LDAR) program that goes beyond the basic requirements and upon completion will allow access to this program to other members of the SOCMH HON regulated community.

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

RESPONDENT	PENALTY AMOUNT	PENALTY PAID	VALUE AMT BEP/SEP	Total Settlement	DATE OF FINAL DEQ APPROVAL	COMMENTS
HAZARDOUS WASTE						
Settlements before BEP rules promulgated						
CITY OF NEW ORLEANS	\$45,625.00	\$3,000.00	Not Specified	\$3,000.00	07/20/95	Training program on HW management for City employees.
UNIROYAL	None	\$5,000.00	\$100,000.00	\$105,000.00	07/20/95	Reduce Toluene emissions, scholarship to LSU, donation to Bioenvironmental Research to Tulane University, donation to local fire department, donation to Institute of Recyclable Material, donation to Dutchtown Middle School.
CARBOLINE	\$22,754.00	None	\$107,000.00	\$107,000.00	09/25/95	Washwater reduction, retrofitting tanks to reduce air emissions & installation of bulk powder transfer system.
ROLLINS/SAFETY KLEEN OF BR	\$130,595.00	\$10,000.00	\$2,628,894.00	\$2,638,894.00	10/06/95	Service to hazardous waste management, transportation & incineration to community & administrative agencies. New tank farm area construction.
BAGWELL BROS.	\$29,529.32	\$12,000.00	\$10,144.00	\$22,144.00	01/12/96	Distillation unit installation.
CONOCO, INC	\$165,300.00	None	\$127,500.00	\$127,500.00	07/09/96	Donation to command post unit to Dept., construction of Phenol Caustic tank which included secondary containment.
ETHYL CORP	\$53,000.00	\$20,000.00	\$80,000.00	\$100,000.00	02/20/97	Construction of skid unit to test recovered groundwater.
MACKENZIE CHEMICAL	\$90,280.72	\$50,000.00	\$17,500.00	\$67,500.00	09/11/97	Audit, donation of tank to local fire department, HW reduction project.
SAFETY KLEEN F/N/A LAIDLAW ENVIRONMENTAL SERVICES, INC.	\$1,055,144.00	\$400,000.00	\$175,000.00	\$575,000.00	09/14/99	Provide, at no charge, waste treatment, storage and disposal services for waste streams/shipments submitted by DEQ.
BRITT KENNEDY SIGNS	\$10,000.00	\$5,000.00	Not Specified	\$5,000.00	11/29/99	Reduce amount of solvents generated; performing audits; install solvent reclaiming unit thus reducing the amount of hazardous waste generated.

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

RESPONDENT	PENALTY AMOUNT	PENALTY PAID	VALUE AMT BEP/SEP	Total Settlement	DATE OF FINAL LDEQ APPROVAL	COMMENTS
BEPs approved by DEQ after BEP rules promulgated						
CARBO CERAMICS, INC.	\$31,581.00	\$7,500.00	\$110,000.00	\$117,500.00	03/29/01	Respondent agreed to replace and/or refurbish new dust collector.
SOLID WASTE						
BEPs approved by DEQ after BEP rules promulgated						
MUNDY SANITARY LANDFILL	\$12,000.00	None	\$33,715.20	\$33,715.20	08/29/00	Respondent agreed to remove and properly dispose of solid waste that had been deposited on thirteen (13) promiscuous dumpsites located in DeSoto Parish.
TENSAS PARISH LANDFILL	\$11,728.00	None	\$12,000.00	\$12,000.00	08/29/00	Agreement to remove and properly dispose of solid waste from seven (7) promiscuous dump sites located in Tensas Parish.
RIVERWOOD INTERNATIONAL U.S.A.	\$64,524.70	\$3,000.00	\$31,500.00	\$34,500.00	03/15/01	Respondent agreed to perform a Pollution Prevention Assessment of the solid waste streams currently generated at the West Monroe Plant 31 facility; donate to the Litter Control Commission to assist in funding Aquabash during calendar years 2000 and 2001; donate money for the years 2000 and 2001 to "Great Louisiana State Levee District Police for purchase of surveillance equipment, and promote within the work force of the West Monroe location, volunteer participation in local cleanup projects.

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

RESPONDENT	PENALTY AMOUNT	PENALTY PAID	VALUE AMT BEP/SEP	Total Settlement	DATE OF FINAL DEQ APPROVAL	COMMENTS
WATER						
Settlements before BEP rules promulgated						
GAYLORD CONTAINER	\$50,000.00	\$17,500.00	\$275,000.00	\$292,500.00	02/21/96	4 projects - water reduction, increasing mill effluent retention capacity, sump integrity project and pipeline integrity study.
DOW CHEMICAL	\$120,740.00	None	\$75,000.00	\$75,000.00	07/10/96	Respondent bought & installed 2 GCs for the Early Warning Organic Compound Detection System on the Mississippi River.
FINA OIL & CHEMICAL	\$48,607.00	\$12,000.00	\$21,500.00	\$33,500.00	02/22/96	3 marsh restoration projects in Terrebonne Parish were undertaken.
NO FAULT INDUSTRIES	\$10,448.00	None	\$8,000.00	\$8,000.00	07/17/96	Community service project involving the donation of playground safety surfacing of Independence Park Playground in Baton Rouge for Handicapped Children. Baton Rouge Recreation & Park Commission indicated that it intends to use the money saved as a result of this project to plant trees, ground cover & address erosion & drainage problems at Independence Park.
CONAGRA POULTRY CO.	\$105,000.00	None	\$60,000.00	\$60,000.00	01/08/98	Contribution of no less than \$60,000 to the Village of Choudrant to be used for construction of a sanitary sewer lift station & extension of the sewer lines to areas not currently covered.
BEPs approved by DEQ after BEP rules promulgated						
PHOENIX OPERATING CO.	\$26,091.00	\$4,000.00	Not Specified*	\$4,000.00	11/02/00	Respondent agreed to provide well plugging services to the LA Office of Conservation under the "orphaned" well program for four wells at a savings of approximately \$15,200 to the state.

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

RESPONDENT	PENALTY AMOUNT	PENALTY PAID	VALUE AMT BEP/SEP	Total Settlement	DATE OF FINAL DEQ APPROVAL	COMMENTS
WILLCO, INC.	\$9,892.00	\$3,000.00	Not Specified*	\$3,000.00	11/28/00	Respondent agreed to remove non-hazardous waste oil and furnish hard container boom material and vacuum truck service to the city-parish government as needed for removal of hazardous waste oil. Respondent agreed to provide personnel & resources for 2 oil collection days within Terrebonne Parish.
DUPONT DOW ELASTOMERS, L.L.C.	\$15,000.00	\$2,000.00	\$13,000.00	\$15,000.00	12/04/00	Respondent made cash payment to the Baton Rouge Zoo to aid in funding of pollution prevention projects.
CITY OF LAFAYETTE	\$11,123.16	None	\$20,000.00	\$20,000.00	03/29/01	Respondent agreed to conduct 6 seminars on pretreatment requirements for eating establishments with University of Louisiana-Lafayette Business & Industry Training Dept.; mail out @ 60,000 bill stuffers that will provide helpful tips for handling household hazardous waste; and produce & air 30-second radio spots concerning proper handling & disposal of hazardous waste.
RE-CLAIM ENVIRONMENTAL LOUISIANA, LLC and U.S. LIQUIDS, INC.	None	\$525,000.00	\$675,000.00	\$1,200,000.00	07/31/01	Respondent agreed to donate money to the Louisiana Rural Water Association, the Governor's Environmental Education Commission, and to Northwestern State University.
CITY OF CROWLEY	\$47,124.00	None	\$350,000.00	\$350,000.00	08/15/01	Respondent agreed to demolish the abandoned treatment facility and install a comminutor to grind solids that are in the influent water, thus increasing the efficiency of the treatment process.

Source: Prepared by legislative auditor's staff using information provided by LDEQ.

Appendix D

Beneficial Environmental Project Rules

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Beneficial Environmental Projects (BEPs) (LAC 33:I.2501-2505)(OS037)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Office of the Secretary regulations, LAC 33:I.Chapter 25 (Log #OS037).

This rule serves to facilitate the settlement of environmental actions and promote the use of beneficial environmental projects (BEPs). It establishes guidance for the use of BEPs in the settlement of enforcement cases with the department. Without this rule, projects that are otherwise advantageous to the state may be delayed, withdrawn, or not performed. R.S. 30:2011(D)(1), 2031, and 2050.7 require the department to promulgate rules to regulate the use of BEPs in the settlement of enforcement cases. The basis and rationale for this rule are to establish the use of beneficial environmental projects that will substantially benefit neighboring communities and reduce the load of pollutants discharged into the environment.

This rule meets an exception listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Department Administrative Procedures

Chapter 25. Beneficial Environmental Projects

§2501. Applicability

A. These regulations apply when the department has decided to enter into a settlement in which a beneficial environmental project (BEP) is utilized. The department reserves the right to settle for the amount of cash penalty, if any, it deems appropriate in considering all of the circumstances relating to the case in which the settlement is perfected. The decision to enter into a settlement that includes a BEP is solely within the discretion of the department. Nothing in these regulations requires that the department enter into a settlement or that the settlement include BEPs. Any BEP may be accepted if it meets the terms of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1603 (August 2000).

§2503. Definitions

Beneficial Environmental Project (BEP) • a project that provides for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to

undertake as a component of a settlement of a violation(s) or penalty assessment.

Environmental Mitigation• that which tends to lead in any way to the protection from, reduction of, or general awareness of potential risks or harm to public health and the environment. Environmental mitigation includes any and all projects that conform to the requirements set forth in LAC 33:I.2505.

Not Otherwise Legally Required to Perform• the approved project is not required of the defendant/respondent by any federal, state, or local law, regulation, or permit (except that early compliance may be allowed) or actions which the defendant/respondent may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1603 (August 2000).

§2505. Project Categories

A. A BEP must be within one or more of the following categories.

1. **Public Health.** A public health project provides diagnostic, preventative, and/or remedial components of human health care that is related to the actual or potential damage to human health caused by a violation of environmental law or mismanagement of substances containing constituents detrimental to human health. This may include, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

2. **Pollution Prevention**

a. A pollution prevention project is one that reduces the generation of pollution through "source reduction," i.e., any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment, or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

b. Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. In-process recycling, wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

c. In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

3. **Pollution Reduction.** If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment, or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. **Environmental Restoration and Protection.** An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of any ecosystem or geographic area. These projects may be used to restore or protect natural environments (including ecosystems) and man-made environments (including the removal/mitigation of contaminated materials, such as soils, asbestos, and leaded paint, from facilities and buildings). Also included is any project which protects the ecosystem from actual or potential damage resulting from violations of state environmental regulations or improves the overall environmental condition of the ecosystem or geographic area. Examples of these projects include: restoration of a wetland; purchase and management of a watershed area or environmentally sensitive area; and providing for the protection of endangered species, i.e. developing conservation programs or habitat protection and enhancement.

5. **Assessments and Audits**

a. The four types of assessments/audits are:

- i. pollution prevention assessments;
- ii. site assessments;
- iii. environmental management system audits; and
- iv. compliance audits.

b. These assessment or audit projects must be performed by an entity approved by the department. The defendant/respondent must agree to provide a certified copy of the assessment or audit to the department along with an implementation report to detail the action(s) taken and/or to defend the facility's decision to forego implementation of the suggested changes listed in the audit report. Settlement agreements which include assessment and/or audit projects may be constructed with stipulated penalty amounts for failure to implement suggested changes included in the report that the department deems appropriate based on an assessment of the certified implementation report provided by the facility. Assessments and audits may not include projects that are required by enforcement and/or legal requirements.

6. **Environmental Compliance Promotion.** An environmental compliance promotion project provides training or technical support to identify, achieve and maintain compliance with applicable statutory and regulatory requirements; avoid committing a violation with respect to such statutory and regulatory requirements; go

beyond compliance by reducing the generation, release, or disposal of pollutants to a level below the legally required limits; or promote environmental education, including awareness of potential risks or harm to the public health and the environment. In all cases, the department will specify the approved party responsible for developing and providing the environmental compliance promotion project. Acceptable projects may include, but are not limited to, the production and or sponsorship of seminar(s) related to environmental obligations, regulations, and improvement techniques.

7. Emergency Planning, Preparedness, and Response. An emergency planning and preparedness project provides assistance to a responsible state or local emergency planning, preparedness, or response entity. This is to enable these organizations to further fulfill their obligations to collect information to assess the dangers of hazardous chemicals present in a response situation, to develop emergency plans and/or procedures, to train emergency response personnel, and to better respond to emergency situations. These projects may include providing computers and software, communication systems, chemical emission detection and inactivation equipment, or hazardous materials equipment or training.

8. Other Projects. Projects determined by the department to have environmental merit that do not fit within at least one of the seven categories above may be accepted if they are otherwise fully consistent with the intent of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1604 (August 2000).

James H. Brent, Ph.D.
Assistant Secretary

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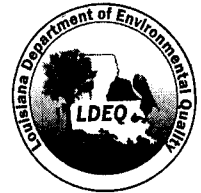
Appendix E

Department of Environmental Quality's Response



State of Louisiana

Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

J. DALE GIVENS
SECRETARY

February 25, 2002

Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor
Post Office Box 94397
Baton Rouge, LA 70804-9397

Dear Dr. Kyle:

This letter is the response of the Louisiana Department of Environmental Quality (LDEQ) to the performance audit conducted at the department over the last several months. Furthermore, LDEQ's response to each of the recommendations can be found in Attachment 1 of this response.

Beginning in 1998, LDEQ undertook a business process reengineering effort that involved the total redesign of our core business processes in order to achieve gains in efficiency and effectiveness. During the same time frame, we began work on a massive project to consolidate all electronic data and paper files into one integrated system. The impetus behind these changes was that our commitments were growing, our resources were shrinking, and we needed a way to proactively manage our workload.

Throughout our efforts, a common theme kept arising: Our commitments far exceed our resources. A prime example is R.S. 30:2012, which requires that LDEQ conduct an inspection of all permitted facilities annually. In the audit report, your staff stated it "...may be unreasonable to expect the department to conduct that many inspections on every permitted facility." We agree with this statement. Despite all our efforts in streamlining and standardizing, it is next to impossible for LDEQ to meet this commitment. As such, reengineering and integrating our data was a step taken to augment our resources so that they would be more in line with our commitments.

We have accomplished quite a bit since 1998, yet we fully understand that there is still much to do. An important goal of our work to date is to ensure continual improvement. There are many tools we use towards that end. These tools include peer review, quality assurance and control procedures, and internal audits. This performance audit provides additional information for us to consider in our evaluation efforts. However, since a performance audit is a subjective process, there are several areas of the audit report with which we disagree and other areas that require further explanation. Moreover, it



should be noted that the majority of the audit recommendations involve issues of which we are fully aware and are currently addressing.

General Comments

An integral part of our commitment to continual improvement is our work towards ISO 9000 and ISO 14000 certification. As you may know, both of these management systems use a proven process of Plan-Monitor-Adjust-Plan in order to maximize outcome and limit negative impact. An integral part of ISO certification is the existence of accurate and concise Standard Operating Procedures (SOP). Over the past two years, we have written hundreds of exhaustive SOPs that delineate the responsibility of all employees involved in a process. Using these SOPs and the work from reengineering, we wrote comprehensive job descriptions. These steps were taken to ensure employees fully realize their responsibilities and associated accountability.

In several areas of the audit report, your staff states that the reengineering efforts and the use of the new information systems may have negatively impacted the morale and productivity of this department. We have found the exact opposite. A true barometer of this situation is documented in the Exit Interview Forms of employees who have left this department for another job. When asked the reason(s) for leaving, not a single employee responded that it was due to the changes we have made. In fact, we have seen a decrease in the turnover of our technical staff and expect that trend to continue. Through reengineering, we have given our employees a stake in the success of the department and they have responded with positive results.

Objective 1: LDEQ's Monitoring Functions

Information Systems

In early 1998, we realized that if we were to succeed with the necessary reengineering of our department, we would need to reorganize along functional lines. Logic dictated that it was necessary to integrate our data from several different media-specific systems into one holistic system. Based on this need, we developed our Integrated Data Management System. The two main components are our electronic data application known as Tools for Environmental Management and Protection Organizations (TEMPO) and our records management tool known as the Electronic Document Management System (EDMS).

TEMPO is the center of the entire Integrated Data Management System. It allows us to maintain all electronic data pertaining to Agency Interests (i.e., facility, site, plant, etc.) in our Master File. From there, we have the ability to compile and track permits,

compliance evaluations, and enforcement actions. However, before we can fully capitalize on this functionality, we must first ensure that all Agency Interests are in our system. We are methodically addressing this issue media by media. We have completed this task in some areas (e.g., Radiation and Solid Waste) and are in transition in others (e.g., Air and Water). For those areas in which we are in transition, it is absolutely necessary to maintain legacy systems for parallel assurance.

The EDMS is our tool to manage our electronic documents and is part of a larger comprehensive records management system. The EDMS is populated with Agency Interest files that are digitally scanned, indexed, and reconciled. ALPS™ is our search and retrieval application within the EDMS that allows us to define search criteria and locate documents. It is important to note that we are bringing together several different filing systems that had little if any references in common. A good example of this is some filing systems used a permit number as the primary reference, another system used parish, and yet another used the facility name. Further differences included the structure of the files. In some systems, all documents were kept in one facility folder, whereas in another system, the permit was kept in a facility folder and all inspections for that facility were kept in a separate facility folder elsewhere. Once again, we are methodically addressing these issues one media at a time and are conforming all to a single standard.

Permit Issuance Commitments

When the state received authorization for the water program from EPA, LDEQ agreed to issue permits to those facilities governed by federal and state regulations. At the time of program assumption, EPA passed on a permitting backlog of approximately 50% of the universe of major facilities, and over 80% of the minor facilities. EPA was never capable of handling this workload in their permitting program, thus a backlog was created. Prior to program assumption, EPA placed little emphasis on the issuance of minor permits. LDEQ has acted on the rationale that minor facilities present a potential for pollution and therefore, permit issuance for them must be addressed.

In Exhibit 2 of the audit report, your staff indicated that we issued water permit coverage to only 221 facilities during the calendar year 2000 and 135 in calendar year 2001. In actuality, by the use of EPA-approved general permits, we permitted an additional 458 facilities in calendar year 2000 and 342 in calendar year 2001. These numbers exceed the permit issuance commitments made to EPA for this two year period.

LDEQ has developed a strategy to reduce the water permit backlog. This strategy was presented to EPA Region 6 in May 2000. That document has been revised to reflect current concerns and the final FY 2002 version will be submitted to EPA very shortly. LDEQ developed this strategy to comply with EPA's national goal to eliminate the

backlog of permits for major facilities by the end of FY04 and eliminate the backlog of permits for minor facilities by FY05. We expect to meet this goal.

EPA approved Louisiana's Title V Air Permitting Program on October 12, 1995. Of the 834 Initial Title V Permit applications that we have received since the start of the program, LDEQ has issued 519. This leaves us with 315, or 38% left to issue. We are currently working on a plan to facilitate the issuance of the remaining Initial Title V permits. We have submitted a plan to EPA to issue the remaining Initial Title V permits by December 31, 2003.

The audit states that 24% of Initial Title V permits have expired. Per LAC 33:III.507.E.3, if the company sends in a complete renewal application within six months of expiration, the facility's right to operate is not terminated upon permit expiration. The Air Permit Application (current version dated June 12, 2001) requires the company's Responsible Official (LAC 33:III.502) to certify that the company and facility referenced in the application will comply with new requirements that have compliance dates effective during the permit term on a timely basis.

Solid Waste Temporary Permits

LDEQ acknowledges that many temporary permits for solid waste facilities have been issued since 1993. As a product of agency reengineering, we have made an effort to resolve the issues surrounding these temporary permits. Several months ago we began a project to develop a list of all the solid waste facilities that have permit actions pending. Some of the facilities on this list have temporary permits. This list shows the order number, the date issued and any resolution that has been made since it was originally issued. All of these temporary permits are being entered into TEMPO. Each facility will be reviewed to determine its current status and a decision will be made on how we will proceed in the permitting process.

Surveillance Activities

Section 30:2012.A of the Environmental Quality Act requires that inspections be timely and meaningful. LDEQ strives to conduct as many high-quality inspections as possible. In targeting facilities for inspection, those that were permitted, but never built, closed, or were not in operation would not be inspected. In some instances some of the facilities noted as not being inspected, were inspected, but the date of the inspection fell outside the chosen fiscal year time frame by one, two or three weeks and were not counted as having been inspected. This is a staff resource issue that the department continues to address.

Objective 2: LDEQ Enforcement Functions

Areas of Concern Versus Violations

The LDEQ's policy of having field inspectors note "areas of concern" in their reports is not new. In an effort to achieve the highest success rate possible during enforcement proceedings, the department has reemphasized the importance of following this guidance across different media inspections and complaint investigations. The procedure is taken from the Environmental Protection Agency guidance on compliance investigations and is located on their web site at the address listed here (www.epa.gov/ebtpages/comcomplinvestigation.html).

The EPA procedures specifically state that inspections are intended to identify "areas of regulatory concern" and should not make statements regarding violations one way or the other. As stated in the EPA guidance, "you would be making an institutional decision without using the system of checks and balances built into the program". The inspector should avoid making any compliance conclusions. LDEQ believes this is consistent with the Environmental Quality Act.

The inspector must be an objective observer and witness of fact. The EPA further explains this reasoning. "The first reason is based on legal ethics. The inspector is the witness of fact and may not be the program compliance case reviewer. If the inspector makes compliance determinations, two things may happen: (1) it places the inspector in the position of being the cop as well as the judge; and (2) it opens a door for emotional or personal bias. A system where there is a division of job roles easily prevents this. The second reason is practical. Usually the program or counsel determines if there is documentation of a violation or not. If you have made a violation determination in the field that was inappropriate, you may have caused unjust expense to the facility that responded to your allegations. Your unilateral decision in the field may limit the decisions available to the agency. If you told the facility, 'There were no problems' and the agency determines that there were, the agency might have to mitigate its decision considerably based on your statements. You may also subject yourself to personal liability."

The Surveillance Division refers areas of concern (AOC) identified during inspections to the Enforcement Division for evaluation. Not all AOCs addressed are necessarily violations, but areas where the facility may need improvement. The AOCs are reviewed and compared to the regulations to determine if the facility is out of compliance, and if an enforcement action is warranted or needed to bring the respondent back into compliance. In many cases, the AOCs identified are found not to be violations. As such, the issuance of an enforcement action would not be appropriate. The Enforcement Division documents via TEMPO those AOCs that do not warrant an enforcement action.

Timeliness of Enforcement Actions

The audit report does not clearly represent all of the activities involved in taking an appropriate enforcement action. A comprehensive file review is conducted during this process. Any noncompliance which has not been previously addressed in a formal enforcement action is included in the action. For example, isolated effluent excursions may not merit an enforcement action, but when combined with inspection violations an enforcement action may be appropriate. This can result in an enforcement action that addresses violations that may have occurred in the past. LDEQ does not believe that this in any way compromises the integrity of its enforcement program, but rather allows for a more comprehensive accounting of violations.

Furthermore, the audit report states that auditors were unable to calculate the timeliness of air enforcement actions because they could not obtain the dates of violations addressed by the enforcement actions without obtaining the actual action. The Enforcement Division is able to provide the dates of violations.

Penalties

Due process under the law is an important principle when dealing with penalties. When a penalty assessment is issued by LDEQ, there are several options that can legally be taken by a respondent in accordance with the Environmental Quality Act. These include the following:

- The respondent may request an adjudicatory hearing. As per section 2050.4 of the Act, upon issuance of a penalty assessment, the respondent has a right to request an adjudicatory hearing. If the hearing request is granted, the penalty assessment is suspended until the adjudicatory hearing process is complete. During the hearing process, the Secretary, with the concurrence of the Attorney General, may settle the penalty assessment as per section 2050.7 of the Act.
- If the hearing request is not granted, the respondent is entitled to *de novo* review of the Secretary's action in the 19th Judicial District Court for East Baton Rouge Parish. If the respondent is dissatisfied with the ruling by the 19th JDC, he has a right of appeal to the 1st Circuit Court of Appeal.
- If a respondent does not request a hearing, the penalty is due within 15 days of the assessment. If the respondent fails to pay the final assessment, an attorney for LDEQ will, with the concurrence of the Attorney General, file an *ex parte* motion with the 19th JDC to have the assessment made executory (i.e. an enforceable order of the court).

Beneficial Environmental Projects (BEPs)

A Beneficial Environmental Project is a project that provides for environmental mitigation, which the respondent is not otherwise legally required to perform, but which the respondent agrees to undertake as a component of a settlement of a violation or penalty assessment. The Beneficial Environmental Projects (BEP) regulations (LAC.33:I Chapter 25) were promulgated in August 2000. Each BEP submitted by a respondent is reviewed extensively by the department's technical and legal staff and must meet the requirements set forth in the regulations. In addition, each approved BEP is public-noticed and submitted for concurrence to the Attorney General prior to finalization.

To date, the 17 BEPs approved since August 2000, have totaled approximately \$9,600,000 and are providing a variety of benefits to the environment. These include:

- Through the state and federal settlement agreements finalized in 2001, Motiva Enterprises agreed to perform several BEPs including: donation of \$280,000 to the Lower Mississippi River Interagency Cancer Study (LMRICS); \$750,000 to perform the Community Ambient Air Monitoring Project over three years; \$3,000,000 to perform flaring reduction over three years; \$1,000,000 for enhancements of Louisiana's overall air quality monitoring network; \$250,000 for enhancements of LDEQ's Mississippi River Early Warning Organic Compound Detection System (EWOCDS).
- The City of Lafayette has agreed to perform the following BEPs approved in March 2001: \$15,000 for conducting six seminars in conjunction with ULL's Business and Industry Training Department focusing on pretreatment requirements for eating establishments and \$5,000 for the "Household Hazardous Waste Project" in which the respondent mailed out approximately 60,000 bill stuffers to provide helpful tips for handling household hazardous waste and aired 30-second radio spots concerning proper handling and disposal of hazardous waste. These projects will help promote public awareness for the proper disposal of household hazardous wastes.

There are many other examples that demonstrate the effectiveness and value of the Beneficial Environmental Project program. The overall positive impact of these projects will continue to be substantial for the citizens and the environment.

Objective 3: Complaint Resolution Process

LDEQ strives to address all complaints and releases as quickly as possible and preferably within 5 working days of receiving notification. The LDEQ believes that responding to complaints within 5 days is being accomplished, but resolution of complaints can take much longer. Due process of law as outlined within section 2025 of the Environmental Quality Act involves time and opportunity for respondents to appeal actions. Additionally, action by the department may be delayed or not occur at all if there is an inadequate finding of fact to support an enforcement action. LDEQ acknowledges that the quality of data entry into TEMPO (the time period covered by the audit included complaints received before TEMPO was fully functional) was not of sufficient quality to capture and verify the required information to support a 5-day response conclusion.

Other Issues

LDEQ's Document Management System

Prior to re-engineering, each LDEQ environmental program (media) maintained records in several disparate paper filing systems (at last estimate, LDEQ's records consisted of over 25 million pages). There was no continuity between any of the filing systems, some of which were inherited from other agencies when LDEQ was first created. In fact, retrieving records on a facility required visiting multiple file rooms or placing public records requests with the custodian of record for each media. Review of records was limited to one individual at a time.

The imaging project began in 1998, and in April 2000, LDEQ hired a full time Records Manager and established a Records Management Section. During Fall 2001, we studied the public's use of ALPS™. Visitors complimented Records Management staff, ALPS™, and our initiative in studying their needs. While the design and implementation of a comprehensive records management program for LDEQ is a work in progress, many significant accomplishments have already been achieved.

Our accomplishments to date include:

- Through the imaging project, all LDEQ facility files that have been imaged are now accessible from a single system.
- In October 2000, LDEQ established the Public Records Room for use by the general public with computer workstations configured to search the LDEQ electronic document management system (EDMS). Staff is on duty Monday through Friday, 8:00 a.m. to 4:30 p.m. to provide personalized help with searching for records and/or

completing public records requests. On average, 150 people per month visit the Public Records Room.

- The Records Management Section is the point of contact for all public records requests. Last year, over 2000 public records requests were received and filled by LDEQ.
- To better understand EDMS users' needs, a recent study was conducted to compare the information needs of the LDEQ user to the non-LDEQ user. Findings from the study are being used to develop a user-friendly Internet-based search tool. A key finding of the EDMS user study revealed that non-LDEQ users who relied on assistance from Public Records Room staff were successful in finding the records they sought.

There are also several initiatives on the horizon. These include:

- An Internet-based EDMS search tool that will greatly increase access to LDEQ public records is currently under development.
- Steps are being taken to address past filing and classification inconsistencies. An in-depth study of EDMS indexing practice and potential is planned for Spring 2002.
- In order to minimize the continuation of paper filing problems in the electronic system, LDEQ personnel review Air Quality files prior to scanning.

LDEQ fully understands the need of the public and its employees to have access to public records and makes every effort to ensure the availability of these records. We are committed to the continuous analysis and improvement of our records management program.

LDEQ's Invoicing Process

Prior to the reengineering of LDEQ, the responsibility for invoicing rested with eight different groups throughout the department. Previous attempts to reconcile outstanding invoices were made by these groups with varying degrees of success. However, as part of reengineering, LDEQ has consolidated all invoicing responsibility into the Financial Services Division, thus providing a centralized invoicing group for the first time in the history of LDEQ.

In parallel with our reengineering efforts to standardize the invoicing process, we also began the reconciliation of outstanding invoices. In consolidating the necessary information for a ten-year period beginning in Fiscal Year 1992, we found the following:

- During the ten-year time frame, LDEQ invoiced \$360,334,489.31.
- During the ten-year time frame, LDEQ applied \$349,432,186 to the invoiced total.
- Over that same ten-year span, \$10,902,303 in invoices was determined to be outstanding.

This represents a 97% collection rate or reconciliation rate.

Based on this information, the first issue we addressed was to improve our reconciliation rate to 100%. As such, the initial approach was to focus on those companies whose invoices totaled greater than \$5,000 and try to reconcile those first. Based on our work beginning in mid FY 2001 to date, we have accomplished the following:

- We have initiated at least a first contact with the responsible party on those outstanding invoices greater than \$5,000 that total \$5,159,314.
- Of that total we have been able to reconcile \$2,866,324 in the following categories:
 - Over/Mis-billing: \$1,028,941,
 - Bankruptcies: \$669,013,
 - No Longer in Operation: \$218,766, and
 - Payments: \$949,604.

These numbers represent a 41% reconciliation of outstanding invoices. And, for those invoices that were sent in error, we have found that the activity for which the company had been invoiced was no longer in effect, i.e., the facility had ceased those operations for which a permit was required. For some of these companies, they were never deleted from a billing system and were continually incorrectly invoiced until such time

they were removed from the system. Our work to reconcile these outstanding invoices is ongoing.

Our next responsibility is to ensure that this does not happen again. To this end, we are currently transitioning our invoicing databases into the TEMPO system. This will allow us the following functionality:

- LDEQ will now have one system for annual permit maintenance and activity based billing.
- All information necessary for billing will be contained in TEMPO.
- Since TEMPO contains effective start dates and end dates for permits, we will now have the ability to invoice for currently effective activities.
- Late payment fees will be assessed automatically.
- All invoices that remain unresolved will be automatically forwarded to the Violation list to be addressed with the appropriate remedial action.

A large part of the department's operating budget is contingent upon our fee system. As such, the department fully realizes the importance of invoicing accurate fees and collecting those fees in a timely manner. The department will continue in its efforts to standardize and improve its invoicing process.

In conclusion, I am proud of the accomplishments of the Louisiana Department of Environmental Quality. Through the efforts of every employee of this department we have made great strides in effectively managing the environment of this State. We are firmly committed to continuous improvement and will constantly strive to meet the needs of the citizens of Louisiana.

Thank you for this opportunity to respond.

Sincerely yours,



Dale Givens, Secretary
Louisiana Department of Environmental Quality

Appendix A: LDEQ's Response to Recommendations

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Recommendation 1: LDEQ should ensure that all of its data systems contain complete, up to date, and accurate data on all facilities that it regulates.

Management's Response: LDEQ is actively working toward making sure all regulated facilities in each media are accounted for in LDEQ's electronic system known as Tool for Environmental Management and Protection Organizations (TEMPO). A major attempt to consolidate all LDEQ legacy systems into one overall departmental system was initiated by developing TEMPO. Our goal is to establish TEMPO as the primary information management system for this department.

Recommendation 2: LDEQ should develop and follow a plan to meet its permit issuance commitments to EPA and to renew expired permits according to its established schedule.

Management's Response: LDEQ is currently working on a plan to facilitate the issuance of the remaining 315 Initial Title V air permits as well as issuing renewal permits. We have committed to EPA to issue the remaining initial permits by December 31, 2003. The department has also entered into negotiations with EPA for a National Level of Effort contract, in which federal dollars will be used to engage a contractor to assist in the drafting of major and minor water permits over a two-year period. Until these negotiations are complete, LDEQ is utilizing all available resources to issue as many water permits as possible in a responsible fashion.

Recommendation 3: LDEQ should establish an accurate and reliable method to track solid waste temporary permits.

Management's Response: As a result of our business process reengineering efforts within the agency, LDEQ has worked to resolve issues surrounding these temporary permits. We acknowledge that many temporary permits have been issued since 1993. Before the audit, we began a project to develop a list of all the solid waste facilities that have permit actions pending. Each facility is being reviewed to determine its current status and a decision will be made as to how we will proceed with the permitting process. Some of these facilities have completed all of the necessary steps required for permit issuance and a final permit decision will be made for these facilities. All of these permits are being entered into TEMPO.

Recommendation 4: LDEQ should develop a policy for inspecting facilities with air permits.

Management's Response: LDEQ currently has a procedure in place to inspect facilities with air permits. Management staff in each of the six regional offices has been provided with the EPA "Compliance Monitoring Strategy" (CMS) for air quality inspections. Regional management staff develops their own annual list of sources to inspect since they are in the best position to determine what sources need the most attention. These plans are reviewed by HQ staff for level of effort purposes and incorporated into the department's operational plan. Headquarter's staff focused current planning to stress inspecting large industrial sources annually, inspecting a high number of sources in the non-attainment areas of the State, and inspecting smaller sources based upon types of pollutants emitted and on complaint and upset history.

Recommendation 5: LDEQ should implement a policy to review self-monitoring data for air and water.

Management's Response: LDEQ currently has an established procedure in place to review self-monitoring data submitted by permitted entities for air and water. These procedures have identified noncompliant facilities and have resulted in the referral of many noncompliant facilities for enforcement action.

Recommendation 6: LDEQ should implement a system to routinely review annual emissions statements for exceedances of permitted limits. LDEQ should consider tracking variances electronically in order to easily determine if those exceedances were allowed by LDEQ.

Management's Response: LDEQ will take steps to initiate a process for the review annual emissions statements for exceedances of permitted limits.

Recommendation 7: LDEQ should either revise its performance indicator on the timeliness of enforcement actions or include an explanatory footnote that explains what enforcement actions are being reported on.

Management's Response: LDEQ's Operational Plan documents the performance indicator currently reported by the Enforcement Division for percent of applicable enforcement actions addressed within the prescribed time periods called for by appropriate state and/or federal guidelines. The explanation to further define the applicable timeframes used by each media was prepared prior to FY 00-01 and included the following:

- High priority air violations will be addressed within 270 days of confirmation of violations;
- Significant noncompliance water violations will be addressed within 150 days of being reported;
- Hazardous waste significant noncompliance violations will be addressed within 180 days of inspection dates or EPA approved timeline extensions;
- Radiation, solid waste, and underground storage tank violations will be addressed within 180 days of receipt of referrals.

Recommendation 8: LDEQ should ensure that enforcement actions are issued consistently among media.

Management's Response: The Enforcement Division continuously evaluates the enforcement process for all media to ensure consistency and has made improvements in the consistency of enforcement among all media since reengineering. Each media reviews its program referrals on a case-by-case basis in accordance with the applicable regulatory requirements to determine if a violation has occurred and the appropriate enforcement response. In addition, LDEQ considers the nine factors required by the Environmental Quality Act when evaluating the referrals for all media.

Recommendation 9: LDEQ should not approve BEPS where the penalty and the BEP is less than the original penalty.

Management's Response: LDEQ disagrees with this recommendation. There are several possible reasons why it may be in the best interest of the State to settle a penalty for less than the original amount, whether a BEP is included or not. These include, but are not limited to:

- Discussions with the respondent reveal mistakes of fact, mistakes of law, inadequate evidence, or other weaknesses in the LDEQ's penalty assessment, which would justify a reduction of the penalty or make it unlikely that LDEQ could obtain a favorable decision for the full amount of the penalty if the matter was litigated.
- Settlement allows LDEQ to avoid the significant delays involved in litigation. Given that LDEQ enforcement actions are subject to 4 possible levels of review (adjudicatory hearing at the Division of Administrative Law; appeal to the 19th Judicial District Court; appeal to the Court of Appeal, 1st Circuit; and Supervisory Review by the Louisiana Supreme Court), a final decision is usually delayed at least a full year, and frequently much longer, delaying any environmental benefit or remediation.
- Settlement allows LDEQ to conserve public funds, which otherwise would be expended on litigation costs, and instead utilize those funds in ways more directly beneficial to the environment.
- Settlement allows LDEQ to avoid the significant uncertainty involved in litigation. LDEQ enforcement actions can be, and frequently are, reversed, modified, and/or remanded at all levels of the appellate process. Furthermore, even if LDEQ prevails and obtains a final order or judgment in its favor, collecting the penalty can often be difficult. A solvent respondent may refuse to pay, forcing LDEQ to locate and seize assets through judicial process. An insolvent respondent may have inadequate assets to pay, and participation in the bankruptcy process may be LDEQ's only means of collecting any part of the penalty. The result is extended delays in implementing environmental corrections.

Recommendation 10: LDEQ should require that facilities submit evidence of economic benefits, including tax savings, as part of future BEP settlement agreements.

Management's Response: LDEQ will take this recommendation under consideration.

Recommendation 11: LDEQ should require all facilities to submit reports outlining the completion date and documentation on the net amount spent on BEPs. LDEQ should also physically inspect projects to ensure their completion.

Management's Response: The department is currently doing this. LDEQ's settlement agreement standard language in use since mid-2001 requires the following information and reports concerning BEPs:

- A full description with the amount to be spent and a timeline for completion for each approved BEP in the finalized settlement agreement;
- Submittal of progress reports regarding the progress of each approved BEPs. These reports must include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each BEP through the date of the report.
- Submittal of a final report, upon completion of each BEP, which must include a summary of all the information previously submitted and a certification that the project was completed as described.

In addition, BEPs are inspected on a case-by-case basis when appropriate by the surveillance staff.

Recommendation 12: LDEQ should issue enforcement actions within its established timeframes.

Management's Response: The Enforcement Division's performance indicator for issuance of enforcement actions within the appropriate timeframes as outlined in our Operational Plan is being met. We strive to meet this goal each quarter. Because of manpower constraints, we are not able to issue all enforcement actions within the appropriate timeframes and must prioritize the referrals to issue enforcement actions for the more severe violations within the performance indicator timeframes.

Recommendation 13: LDEQ should ensure that it resolves complaints timely.

Management's Response: LDEQ endeavors to address all complaints and releases as quickly as possible and preferably within 5 working days of receiving notification. LDEQ believes that responding to complaints within 5 days is being accomplished, but resolution of complaints can take much longer. Again, due to manpower constraints, it is necessary that we prioritize complaints balanced against inspections to ensure we are addressing those matters with the largest environmental impact.

Recommendation 14: LDEQ should properly address violations discovered during complaint investigations.

Management Response: It should be noted that areas of concern are discovered during complaint investigations and not violations. The Enforcement Division does evaluate the complaints based on the supporting evidences and addresses all areas of concern that are deemed to be violations.

Recommendation 15: LDEQ should closely monitor all records management functions to ensure that records are properly stored both physically and electronically and are easily accessible.

Management's Response: LDEQ is indeed committed to the continuous analysis and improvement of its records management program. While the design and implementation of a comprehensive records management program for LDEQ is a work in progress, many significant accomplishments have already been achieved. For example, as a result of the imaging project, all LDEQ facility files that have been imaged are now accessible from a single system searchable in the Public Records Room and soon to be available via the Internet. To ensure consistency, the quality of each of these images is reviewed according to a seven-point checklist before it is accepted into this system.

Recommendation 16: LDEQ should establish a uniform billing and collection mechanism that ensures that companies are properly billed and that they make timely payments.

Management's Response: LDEQ is currently transitioning its invoicing databases into the TEMPO system. As a result, TEMPO will now be the department's consolidated billing and collection system. All information necessary for permit maintenance and activity billing will be contained in TEMPO. And, since effective start dates and end dates for permits will be contained in the system, LDEQ will now have the ability to invoice for all currently effective activities. Furthermore, late payment fees will be assessed automatically and invoices that remain unresolved will be automatically forwarded to the Violation list to be addressed with the appropriate remedial action.